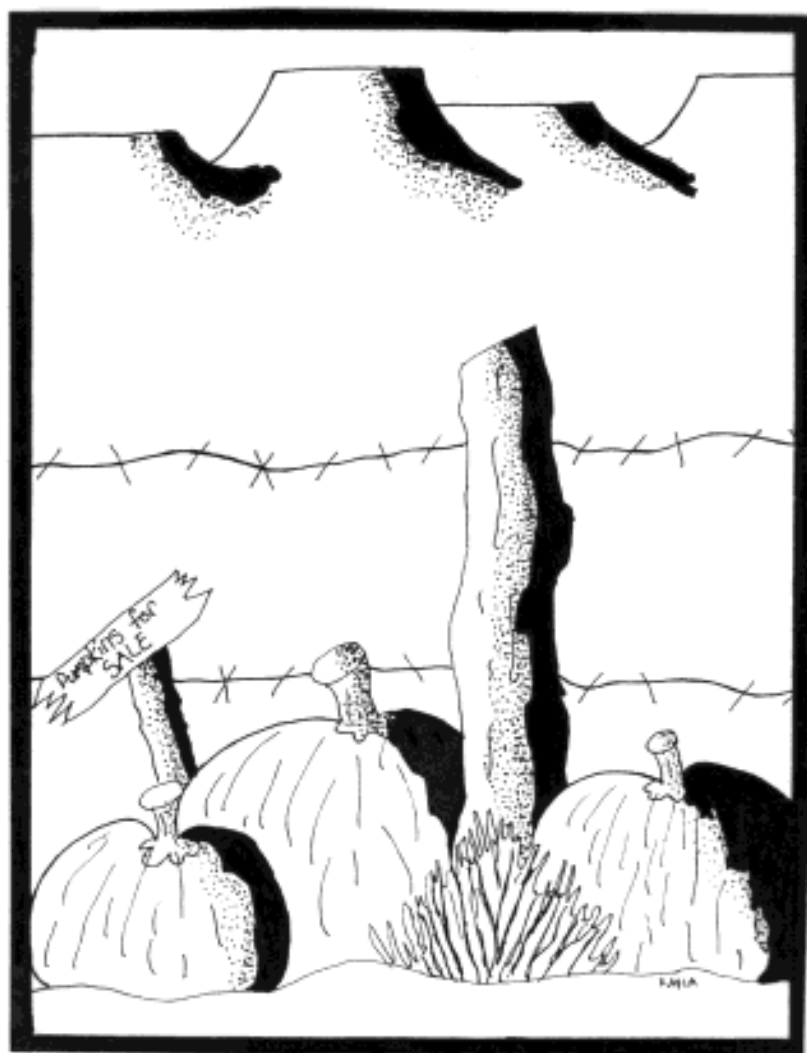


TEXAS REGISTER

Volume 22 Number 71 October 10, 1997

Pages 10063-10189



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Artist: Kayla Altman

6th Grade

Vega Elementary

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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(800) 226-7199
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As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Office of the Governor

Appointments Made by the Governor

Appointments Made November 22, 1996: To be designated as chair of The Woodlands Charles Vincent Prothro of Dallas, and W. Arthur Porter as vice chair of the Texas Science and Technology Council for terms at the pleasure of the Governor.

To be appointed as members of the Texas Science and Technology Council pursuant to Executive Order GWB 96-6 dated September 18, 1996 for two year terms and at the pleasure of the Governor:

BUSINESS: Nancy T. Chang, Ph.D., President and CEO, Tanox Biosystems, Inc. 10301 Stella/Link, Houston, Texas 77025; Cynthia J. Comparin, Division President, ALLTEL, 4455 LBJ, Suite 1100, Dallas, Texas 75244; Terry W. Conner, Partner, Haynes and Boon, L.L.P., 901 Main Street 3100 NationsBank Plaza, Dallas, Texas 75244; James L. Donald, Chairman, President and CEO, DSC Communications Corporation 1000 Coit Road, Plano, Texas 75075; John D. Fernandez, Ph.D. President, Information Systems Division, Operational Technologies Corporation, 4100 N.W. Loop 410, Suite 230, San Antonio, Texas 78229; William J. Huffstetler, Business Development Director, Lockheed Martin Corporation, 2625 Bay Area Road, Mail Code A16, Houston, Texas 77528; George Kozmetsky, DCS, Executive Associate for Economic Affairs, The University of Texas System, 601 Colorado Street, Austin, Texas 78701; L. Lowry Mays, President/CEO, Clear Channel Communications, Inc., 200 Concord Plaza, Suite 600, San Antonio, Texas 78216; William B. Mitchell, Vice Chairman, Texas Instruments, P.O. Box 655474, MS 236, Dallas, Texas 75265; W. Arthur Porter, Ph.D., President, Houston Advanced Research Center, 4800 Research Forest Drive, The Woodlands, Texas 77381; Charles Vincent Prothro, Chairman and CEO, Dallas Semiconductor Corporation, 4401 South Beltwood Parkway, Dallas, Texas 75244; Robert W. Stearns, Senior Vice President, Technology and Corporate Development, Compaq Computer Corporation, 20555 SH 249, MS110806, Houston, Texas 77070; Danny Lee Vickers, President, EDM International, 2120 East Paisano, #140, El Paso, Texas 79909; Van H. Taylor, President and CEO, Southwestern Bell Technology Resources, 9505 Arboretum boulevard, Ninth Floor, Austin, Texas 78759;

ACADEMIA: Paul Ching-Wu Chu, Ph.D., Director, Texas Center for Superconductivity, University of Houston, Houston Science Center, 3201 Cullen Boulevard, Houston, Texas 77204-5932; Marye Anne Fox, Ph.D. Vice President for Research, The University of Texas at Austin, Main Building, Suite 302, Austin, Texas 78712-1111; C. Roland Haden, Ph.D., Vice Chancellor and Dean of Engineering, Texas A&M University System, 301 WERC, College Station, Texas

77843-3126 Franklyn G. Jenifer, Ph.D. President, The University of Texas at Dallas, P.O. Box 830688, MS AD22, Richardson, Texas 75083-0688; Paul Ray Vaughn, Ph.D., Professor and Chairman, Department of Agricultural Education and Communications, Texas Tech University, Box 42131, Lubbock, Texas 79409;

GOVERNMENT: Gary D. McCaleb, Ph.D., Mayor, City of Abilene, P.O. Box 60, Abilene, Texas 79604-0060; Brendan B. Godfrey, Ph.D. Director, Armstrong Laboratory, 2509 Kennedy Circle, Brooks AFT, Texas 78235-5118;

EX OFFICIO: Brenda F. Arnett, Executive Director, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711; Roger James Benavides, Telecommunications Infrastructure Fund Board, 140 Heimer Road, Suite 400, San Antonio, Texas 78232; James Laurence Caldwell, Ph.D. Chair, Governor's Committee on People with Disabilities; Member, Texas Commission for the Blind, 11400 Burnet Road, Internal Zip 295D, Austin, Texas 78758; Walter H. Criner, Chair, Texas Department of Commerce Policy board, 6420 Richmond Avenue, Suite 645, Houston, Texas 77057; David R. Perdue, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001.

To be appointed as member of Texas Southern Board of Regents for a term to expire February 1, 2001: Albert C. Black, Jr., 3814 Andrea Lane, Rowlett, Texas 75088. Mr. Black will be filling the unexpired term of Preston Moore, Jr. of Houston who resigned.

Appointments Made December 6, 1996

To be appointed as a member of the Texas Workers' Compensation Insurance Fund Board of Directors for a term to expire February 1, 1997: Charles Hugh Whiteside, Ph.D., Route 3, Box 181, WS, Kilgore, Texas 75662. Dr. Whiteside will be filling the unexpired term of Michael W. Brest of San Angelo who resigned.

Appointments Made December 9, 1996

To be appointed as members to the Texas Higher Education Coordinating Board for terms to expire August 31, 1997: Martin Basaldua, M.D., 4006 Aspen Mountain Trail, Kingwood, Texas 77345. Dr. Basaldua will be filling the unexpired term of Dr. Ray E. Santos of Lubbock who is deceased; Robert W. Shepard, 908 Palm Valley Drive East, Harlingen, Texas 78552. Mr. Shepard will be filling the unexpired term of Juan Hinojosa of McAllen who resigned.

Appointment Made July 17, 1997

To be appointed as member of the Real Estate Research Advisory Committee for a term to expire January 31, 1999: Cecilia Ross Godde-Haddock, 5560 Timberwood Drive, College Station, Texas

77845. Ms. Good-Haddock will be filling the unexpired term of Andrea Lopez Moore of Houston who resigned.

Appointments Made July 18, 1997

To be appointed to the Texas Workforce Commission for a term to expire February 1, 1999: Terrence P. O'Mahoney, 4425 San Gabriel Drive, Dallas, Texas 75229. Mr. Mahoney will be filling the unexpired term of David Perdue of Dallas who was not confirmed by the Senate;

To be appointed to the Texas Health Care Information Council for a term to expire September 1, 2001; Connie Sterling Blosser, 3303 54th Street, Lubbock, Texas 79413. Mrs. Blosser will be filling the unexpired term of Norma S. Garza of Brownsville who resigned.

Appointments Made July 21, 1997

To be appointed as members of the Texas Insurance Purchasing Alliance Board of Trustees

For terms to expire February 1, 2003: Jeffrey P. Lawlor, 10600 McFarlie Cove, Austin, Texas (replacing Marvin L. Ragsdale of Austin whose term expired); Esperanza (Hope) P. Andrade, 11102 Auburn Woods, San Antonio, Texas 78249, (reappointment).

To be appointed as members of the Texas Optometry Board For a term to expire January 31, 1999: Joe W. DeLoach, O.D., 445 Trail View, Garland, Texas 75043, (filling the unexpired term of Dr. Susan B. Place who moved out of state).

For a term to expire January 31, 2001: Judy M. Eidson, 108 Bison Road, San Antonio, Texas 78232, (filling the unexpired term of Jimmy J. Bitner of Kerrville who resigned).

For terms to expire January 31, 2003: Donald R. Glenz, O.D., 5529 Pebble Springs, Houston, Texas 77066, (replacing Dr. Stanley C. Pearle of Dallas whose term expired); B.J. Garner, O.D., 11314 Sageriver Drive, Houston, Texas 77089, (replacing Dr. Wesley Pittman of Mexia whose term expired); Katherine M. Garrett, P.O. Box 940, Mineral Wells, Texas 76068, (reappointment).

To be appointed as a member of the College Opportunity Act Committee, for a term to expire February 1, 2003: Laura Haley Bley, 4712 Boulder Run, Fort Worth, Texas 76109, (replacing Dr. Susan Osterberg of Houston whose term expired).

To be appointed as members of the State Board of Nurse Examiners, for terms to expire January 31, 2003: Thalia H. Munoz, R.N., P.O. Box 11, Grant Street, Roma, Texas 78584, (replacing Rose Marie Caballero of Corpus Christi whose term expired); John Fonteno, Jr. P.O. Box 8471, Houston, Texas 77004-5104, (replacing Pat Crowe of Fort Worth whose term expired); Elizabeth C. Poster, RN, Ph.D., 801 Findlay Drive, Arlington, Texas 76012, (replacing Mary V. Fenton of Galveston whose term expired).

Appointments Made August 1, 1997

To be appointed as members of the Texas Funeral Commission for terms to expire January 31, 2003: John Q. Taylor King, 2400 Givens Avenue, Austin, Texas 78722-2105 (replacing Robert Ray Dixon of West Columbia whose term expired); Roy H. Kiser, 1306 Zephyr Street, Plainview, Texas 79072, (replacing Norberto Salinas, Sr. of Mission whose term expired); Martha J. Rhymes, 2105 East Old Highway 80, White Oak, Texas 75693, (replacing Martha Fitzwater of San Antonio who resigned).

Appointment Made August 8, 1997

To be appointed as member of the Veterans Land Board for a term to expire December 29, 2000: Lt. General Neal "Tom" Jaco (Retired), 11811 Elmscourt, San Antonio, Texas 78230, (replacing Jesse D. Martin of Lubbock whose term expired.).

Appointment Made August 15, 1997

To be appointed as members of the Texas State Board of Acupuncture Examiners for terms to expire January 31, 2003: Mary Rebecca Atchley, 7704 Knoxville Drive, Lubbock, Texas 79423, (reappointment); Everett G. Heinze, Jr., M.D., 10510 Sans Souci Place, Austin, Texas 78759, (replacing Dr. Stephen Taylor of Fort Worth whose term expired); Jacquelyn Diane Pearson, 4004 Dickerson Court, Plano, Texas 75093-6604, (replacing Gus Garcia of Austin whose term expired).

To be appointed as member of the Texas Cosmetology Commission for a term to expire December 31, 2001: Clare Taylor, 915 Red Oak, Corsicana, Texas 75110, (filling the unexpired term of Brian P. King of Houston who was not confirmed by the Senate).

To be appointed as members of the Texas Commission for Volunteerism and Community Service:

For a term to expire April 1, 1999: Limas Jefferson, 4103 Woodbank Court, Seabrook, Texas 77586 (replacing Dan Johnson of Denton who resigned).

For terms to expire April 1, 2000: Katrina Baker, 3101 South Fairfield, Amarillo, Texas 79103, (replacing Jeri Chambers of Plano whose term expired); Jamie L. Barshop, 3504 Stevenson Avenue, Austin, Texas 78703 (reappointment); Eric G. Bing, 2729 Centenary, Houston, Texas 77005, (replacing Richard Munisteri of Houston whose term expired); Dr. Thomas W. Currie, III, 408 Fairview, Kerrville, Texas 78028, (replacing Dr. Robert Berdahl of Austin whose term expired); Eloise Meadows Rouse, 4540 Lorraine Avenue, Dallas, Texas 75205 (reappointment); Dr. Philip Uri Treisman, 3213 Hampton Road, Austin, Texas 78705 (reappointment).

Appointments Made August 25, 1997

To be appointed as member of the State Aircraft Pooling Board for a term to expire January 31, 2001: Scott E. Rozzell, 2740 Barbara Lane, Houston, Texas, (filling the unexpired term of Joe B. McShane, III of Midland, who is deceased.)

To be appointed as members of the Texas Southern University Board of Regents for terms to expire February 1, 2003: A Margin Wickliff, Jr. 3530 South Parkwood Drive, Houston, Texas 77021 (replacing Jernard M. Gross of Houston whose term expired); Fred S. Zeidman, 1602 South Boulevard, Houston, Texas 77006, (replacing Rufus Cormier, Jr. of Houston whose term expired).

To be appointed as members of the Governor's Commission for Women for terms to expire February 1, 1999. These individuals will replace the current membership: Patricia V. Asip, 4816 Bear Run Drive, Plano, Texas 75093, (214) 880-6217; Karen Bonner, 326 Haroldson, Corpus Christi, Texas 78412, (512) 888-4873; Dee Brents 6341 Inca Road, Fort Worth, Texas 76116, (817) 567-2654; Kimberly D. Jessup, 14117 Cardinal Lane, Houston, Texas 77079, (713) 293-0999; Ann Marilyn Leitch, M.D. 4520 S. Versailles, Dallas, Texas 75205, (214) 648-3039; Claudette Lewallen, P.O. Box 313, Moulton, Texas 77975, 1-800-595-8110; Diane Lowell, 3021 22nd Street, Lubbock, Texas 79410, (806) 743-4377; Barbara MacArthur, 14 Winged Foot Way, Abilene, Texas 79606, (915) 670-3700; Mildred Marshall, 1801 Ransom Terrace, Fort Worth, Texas 76112, (817) 927-3874; Linda Lea McKenna 802 Palm Valley Drive,

Harlingen, Texas 78552, (210) 567-5882; Barbara Miller, 5654 River Road, Amarillo, Texas 79108, (806) 353-0317; Jan D. O'Neill, 2511 Sinclair Avenue, Midland, Texas 79705 (915) 683-4324; Cisa Rivera, 5805 Via Cuesta, El Paso, Texas 79912, (915) 544-7636; Darby Rove, 616 Crystal Creek Drive, Austin, Texas 78746, (512) 263-5932; Maria E. "Bebe" Zuniga, P.O. Box 430189, Laredo, (956) 722-4672.

Appointments Made August 29, 1997

To be appointed as presiding officer of the Texas Commission on Law Enforcement Officer Standards and Education for a term at the pleasure of the Governor, pursuant to HB Number 1856, 75th Legislature, Regular Session. Sheriff Kaiser will continue to serve as a member of the commission.

To be appointed as a member of the State Office of Risk Management for a term to expire February 1, 1999, Gerald M. Lavey, pursuant to House Bill Number 2133, 75th Legislature, Regular Session. Mr. Lavey will also serve as a member of the commission.

For terms to expire February 1, 1999: Judge Macaela Alvarez, 6100 North 28th Street, McAllen, Texas 78504; Frances C. Oliver, 2401 London Drive, Plano, Texas 75025.

For terms to expire February 1, 2001: Martha A. Rider 4235 Brandemere Way, Houston, Texas 77066; Dr. Ronald D. Beals, 9036 Old Hickory Road, Tyler, Texas 75703.

For terms to expire February 1, 2003: Gerald M. Lavey, 7706 Par Five Drive, Humble, Texas 77346; Ray "Tom" Pace, 1417 Wilshire Drive, Odessa, Texas 79761.

Appointments Made September 15, 1997

To be appointed as member of Public Utility Commission of Texas, for a term to expire September 1, 2003: Patricia A. Curran, 534 Piney Point Road, Houston, Texas 77024. Ms. Curran will be replacing Robert W. Gee of Austin whose term expired.

To be appointed as a member of the Texas Judicial Council pursuant to House Bill Number 2297, 75th Legislature, Regular Session:

For a term to expire June 30, 1999: Diego J. Pena, 8803 Welles Creek Circle, San Antonio, Texas 78240-2112:

For terms to expire June 30, 2001: James R. Brickman, 3417 Princeton Avenue, Dallas, Texas 75205; Kathleen Cardone, [address redacted].

For terms to expire June 30, 2003: James Boswell, 2308 Cross Bend Road, Plano, Texas 75023; Joseph Alan Callier, 2402 Kings Forest Drive, Kingwood, Texas 77339.

To be designated as presiding officer of the Texas Turnpike Authority, pursuant to Senate Bill Number 370, 75th Legislature, Regular Session; Pete Winstead of Austin. Mr. Winstead will serve as presiding officer at the pleasure of the Governor.

To be appointed as members of the Texas Turnpike Authority, pursuant to Senate Bill Number 370, 75th Legislature, Regular Session:

For terms to expire February 15, 1999: Samuel "Sam" E. Barshop, 212 La Rue Ann Court, San Antonio, Texas 78213; Allan L. Johnson, Route 3, Box 250 J, 5707 Garrett Road, Harlingen, Texas 78552.

For terms to expire February 15, 2001: Mary Q. Kelly, 3450 Hunters Circle, San Antonio, Texas 78230; Manuel Zuniga, 1726 Glencliff Drive, Austin, Texas 78704.

For terms to expire February 15, 2003: Glenn Jarvis, 4700 North Ware Road, McAllen, Texas 78504; Pete Winstead, 79 Pascal, Austin, Texas 78746.

To be appointed as members of the Texas State Board of Veterinary Medical Examiners for terms to expire August 26, 2003: J. Lynn Lawhon, D.V.M. 4009 Inverrary Drive, Abilene, Texas 79606 (replacing Dr. James M. Gomez of Brownsville, whose term expired); Mary Rebecca B. Terry (Becky), P.O. Box 75, Alpine, Texas 79831-0075, (replacing Joyce Schiff of Dallas whose term expired); Martin E. Garcia II, D.V.M. P.O. Box 325, Raymondville, Texas 78580 (replacing Dr. John A. Wood of Lufkin whose term expired).

To be appointed as members of the Texas State Board of Physical Therapy Examiners:

For a term to expire January 31, 2001: Mary R. Daulong, 41 Champion Villa Drive, Houston, Texas 77069 (replacing Cecilia Acers of San Antonio whose term expired)

For terms to expire January 31, 2003: Harvey D. Aikman, 2400 Sendero Drive, Mission, Texas 78572 (replacing Barbara Shell of Houston whose term expired); Mark G. Cowart, 2616 East 17th Street, Odessa, Texas 79761 (reappointment); Cynthia Fisher, 408 Bruce Place, El Paso, Texas 79929 (replacing Ann Walker of Dallas whose term expired).

To be appointed as members of the Sabine River Authority of Texas Board of Directors:

For a term to expire July 6, 2001: Sammy Dean Dance, P.O. Box 1833, Center, Texas (will be filling the unexpired term of James Campbell of Center who was not confirmed by the Senate).

For terms to expire July 6, 2003: Joyce Plummer Hugman, 802 County Club Road, Gladewater, Texas 75647 (reappointment); Richard A. Linkenauer, Route 8, Box 350, Greenville, Texas 75402, (replacing Geraldine Nichols of Quitman whose term expired); Ruben S. Martin, III, 3 Huntington Street, Longview, Texas 75601 (replacing Nolton Brown of Bridge City whose term expired)

To be appointed as presiding officer of the Texas State Board of Acupuncture Examiners, Annette M. Zaharoff, M.D., for a term at the pleasure of the Governor. Dr. Zaharoff will be replacing Gus Garcia of Austin who no longer serves on the board.

To be designated Chairman of the Credit Union Commission, for a term to expire at the pleasure of the Governor: Garold R. Base. Mr. Base will continue to serve as a member of the commission.

Appointments made September 18, 1997

To be appointed as members of the Texas Higher Education Coordinating Board for terms to expire August 31, 2003: Adair Wakefield Margo, 709 East Blacker Avenue, El Paso, Texas 79902, (replacing Andrew Melontree of Tyler whose term expired); Martin Basaldua, M.D., 4006 Aspen Mountain Trail, Kingwood, Texas 77345, (reappointment); Kevin Paul Eltife, 400 West Seventh Street, Tyler, Texas 75701, (replacing Rene Haas of Corpus Christi whose term expired); Douglas Sloan Harlan, 28049 Smithson Valley Road, San Antonio, Texas 78261, (replacing Martha Miller of Texarkana whose term expired); Robert W. Shepard, 908 Palm Valley Drive East, Harlingen,

Texas 78552, (reappointment); Pamela Pitzer Willeford, 2511 McCullough, Austin, Texas 78703, (reappointment).

Appointments made September 19, 1997

To be designated as Chairman of the Texas Commission of the Blind: C. Robert Keeney, Jr., of Houston. Mr. Keeney will be replacing John Turner who resigned as chairman. Mr. Turner will remain on the board.

To be appointed as member of the Fire Fighters' Pension Commission for a term to expire July 1, 1999: Morris E. Sandefer, Jr., 230 Pinata, Lumberton, Texas 77657. Mr. Sandefer will be replacing Helen L. Campbell of Austin who resigned.

To be appointed as members of the Polygraph Examiners Board: For a term to expire June 18, 2001: Elizabeth Perez Bellegarde, 7032 Desert Canyon, El Paso, Texas 79912, (filling the unexpired term of Judge Janet Blacklock of Lubbock who resigned); for terms to expire June 18, 2003: William K. Teigen, 9328 Moss Trail, Dallas, Texas 75231 (replacing Bob H. Musser of Houston whose term expired); Robert J. Kruckemeyer, 16211 Salmon Lane, Spring, Texas 77379 (replacing William H. Quimby of Dallas whose term expired).

To be appointed as member of the Texas State Board of Podiatry Examiners for terms to expire July 10, 2003: Donald Wayne Falknor, D.P.M., 66 Heathrow, Sugar Land, Texas 77479 (replacing Dr. Michael Valenza of Austin whose term expired); Jim D. Lummus, D.P.M., 318 South Adams, San Angelo, Texas 76901, (replacing Dr. Thomas Garrison of Houston whose term expired); Barbara G. Young, 6719 Avenue B, Bellaire, Texas 77401 (reappointment).

To be appointed as members of the Texas State Board of Examiners of Perfusionists for terms to expire February 1, 2003: Debra Sue Douglass, 716 Wortham Drive, Grapevine, Texas 76051, (replacing Trudi Stafford of Texas whose term expired); M. Adam Mahmood, Ph.D., 647 Bluff Canyon Circle, El Paso, Texas 79912, (replacing Joe Street of Austin whose term expired); Steve A. Raskin, 2114 Walnut Grove Lane, Richmond, Texas 77469 (replacing Sammie Lou Bricker of Lubbock whose term expired).

Issued in Austin, Texas on October 10, 1997.

TRD-9713266

George W. Bush
Governor of Texas

ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Letter Opinions

LO-97-081 (ID# 39419). Request from the Honorable Lee Price Fernon, Baylor County Attorney, 101 South Washington, Seymour, Texas 76380. Request from the Honorable Dib Waldrup, Criminal District Attorney, 150 North Seguin, Suite 318, New Braunfels, Texas 78130-5113, concerning whether a county commissioner may also serve as a reserve deputy sheriff.

SUMMARY Neither Article XVI section 40 of the Texas Constitution nor the common-law doctrine of incompatibility prohibits a county commissioner from also serving as a reserve deputy sheriff.

LO-97-082 (ID# 38631). Request from the Honorable John Vance, Dallas County District Attorney, Frank Crowley Courts Building, LB 19, Dallas, Texas 75207-4399, concerning computer signature on arrest warrants and affidavits.

SUMMARY Dallas County may utilize a computer system to prepare affidavits and arrest warrants and to transfer them among the public officers and employees who have responsibilities connected with these documents. A judge may "sign" an arrest warrant by personally entering a computer graphic of his signature on the warrant in the computer system. A magistrate may issue a warrant based upon a computer facsimile of an affiant's signature, assuming that the affiant orally swears to the truth of the affidavit and signs it in the magistrate's presence.

LO-97-083 (ID# 39509). Request from the Honorable Jill Cornelius, Matagorda County Attorney, 1700 Seventh Street, Bay City, Texas 77414-5034, concerning employee's use of an official vehicle assigned to a district attorney's office.

SUMMARY Request from the wife of the chief investigator for the District Attorney of Matagorda County, who is also an employee of the district attorney, may ride as a passenger commuting to and from work in an official vehicle assigned to the chief investigator without it being considered a misuse of government property.

LO-97-084 (ID# 39287). Request from the Honorable Lane Arthur, Coke County Attorney, P.O. Box 55, 13 East Seventh Street, Robert

Lee, Texas 76945, concerning whether a county commissioners court may expend county funds for the construction, improvement, maintenance, or repair of streets within a municipality.

SUMMARY A commissioners court does not have authority under §251.012 to expend county funds for the construction, improvement, or repair of a street or alley, within an incorporated municipality, that is not an "integral part" of or a "connecting link" with the county roads or highways.

LO-97-085 (ID# 39442). Request from the Honorable John L. Hutchison, Hansford County Attorney, P.O. Box 506, Spearman, Texas 79081, concerning commissioners court's authority over construction and operation of a concentrated animal feeding operation.

SUMMARY A commissioners court has no specific authority with respect to a concentrated animal feeding operation ("CAFO"). A county does have authority to enforce environmental pollution laws in general under the provisions of the Health and Safety Code and the Water Code. A county has very limited authority to regulate the actual construction and operation of a CAFO or similar facility, however, under those provisions. Generally, the Texas Natural Resource and Conservation Commission is the state agency with authority to issue permits for construction and operation of a CAFO facility. A county's role is generally limited to opposing issuance of such permit.

LO-97-086 (ID# 39334). Request from the Honorable Dennis Cadra, Andrews County Attorney, 109th Judicial District, Andrews County Courthouse, Andrews, Texas 79714, concerning whether lesser included offense for class C misdemeanor traffic violation may be submitted in a justice or municipal court or on de novo appeal in a county court.

SUMMARY The offense of speeding may be submitted as a lesser included offense of excessive speeding.

TRD-9713023

EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 6. State Infrastructure Bank

The Texas Department of Transportation adopts on an emergency basis Chapter 6, §§6.1-6.4, 6.11, 6.12, 6.21-6.24, 6.31, 6.32, and 6.41-6.46, concerning a state infrastructure bank.

Section 350 of the Federal National Highway System Designation Act of 1995 (Public Law Number 104-59) provides that federal funds are available for the provision of financial assistance to eligible transportation projects through a state infrastructure bank. Senate Bill 370, 75th Legislature, 1997, enacted Transportation Code, Chapter 222, new Subchapter D to create a state infrastructure bank to provide financial assistance for urgently needed transportation systems.

This chapter is adopted on an emergency basis to comply with Senate Bill 370 which became effective September 1, 1997. Failure to quickly implement the State Infrastructure Bank would cause the delay of critical infrastructure projects. Therefore, the Texas Transportation Commission finds that an imminent peril to the safety and welfare of the traveling public, and the requirements of state law require adoption of rules on fewer than 30 days notice.

Section 6.1 describes the purpose of the bank as defined by law.

Section 6.2 provides definitions for words and terms used in this chapter.

Section 6.3 describes general policies to provide the public with information which pertains to all activities of the bank. Subsections (a) through (f) restate provisions of law and are included to emphasize requirements which cannot be negotiated. Subsection (g) implements audit requirements of the federal regulations and further provides for prudent safeguards for the use of public funds.

Section 6.4 provides that projects which are complete or are in advanced stages of consideration by the department do not have to incur additional costs or time delays because of the adoption of these rules.

Section 6.11 provides that applicants must be legally authorized to construct, maintain, or finance eligible projects.

Section 6.12 implements the provisions of law by defining projects that are eligible for consideration.

Section 6.21 states that the executive director may assist potential applicants in developing an application provided the department is authorized by state law to do so.

Section 6.22 provides that all requests for financial assistance will be made in a form which allows comparison regardless of the type of assistance requested. Comparability will aid in approving or rejecting projects and in prioritizing projects should the demand for assistance exceed the bank's ability to provide assistance.

Section 6.23 provides that applicants must submit basic information in an application to describe the project and requested financial assistance. Supplemental information and data are also required to more fully describe the project and to provide information regarding financial feasibility, project impacts, and commitments and approvals. An exception is provided to avoid unduly burdening applicants with new study requirements when the project is in the Unified Transportation Program Priority 1 or Priority 2 designations. Also to avoid undue burdens, irrelevant requirements may be waived. To provide complete information, additional explanations and expansions of information or data may be required.

Section 6.24 provides that the commission may suspend and subsequently restart the taking of applications should the bank's operation or financial condition need such action. This is intended to avoid applicants incurring the costs of studies and application preparation when the bank is unable to promptly consider offering financial aid.

Section 6.31 provides that applicants will be notified when an application is complete. The executive director will analyze the information presented and submit findings and recommendations for the application to the commission for further consideration.

Section 6.32 explains that all completed applications will be submitted to the commission for consideration. The commission may grant preliminary approval if the project and applicant are likely to have sufficient revenues to repay the financial assistance, the project is consistent with various transportation plans, and meets applicable requirements for social, economical and environmental impact studies. Preliminary approval authorizes the executive director to negotiate an appropriate agreement with the applicant regarding the project and financial assistance.

Preliminary approval of an agreement to provide financial assistance may be made so long as it does not authorize final approval and construction of the project.

Final approval of a project and its construction may be made only after completion and approval of all required social, economical and environmental studies. The commission may postpone action on an application if warranted by the bank's financial condition. The commission may make both preliminary and final approval contingent on the applicant meeting requirements or performing acts. Preliminary approval, final approval, or disapproval must be made by written commission order and include rationale, findings and conclusions.

Section 6.41 provides that the executive director will negotiate agreements. Specific guidance on the anticipated nature of these agreements is provided. However, the executive director may choose to not include terms given in the subchapter and may include terms that are not in the subchapter depending on the nature of each individual project.

Section 6.42 provides that the department may perform all or part of the work for a project. If performed, the work will be performed in the normal course of business with financial aid provided as required. The applicant will be liable for repayment of principal, interest and any fees from the date the financial aid is provided. In order to allow the department to work on the project in the most efficient and economic manner, applicants may not contest the department's decisions. The applicant will provide rights of entry and otherwise assist in the pursuit of the work.

This section also provides that the department may allow the applicant to conduct all or part of the work. If so conducted, additional provisions are required to avoid jeopardizing the department's revenues from federal reimbursements. Should an applicant charged with conducting the work fail to comply with requirements, then the applicant will reimburse the department for the loss of any federal funds. To ensure that federal requirements are met, requests for approvals will be routed through normal departmental channels.

Section 6.43 provides that the department may require adherence to applicable standards in order to ensure that federal requirements are met.

Section 6.44 provides that the department may require the use of maintenance standards when needed to protect security interests in a project or asset and to protect the public's safety. The section also provides that applicants shall set any applicable speed limits as prescribed by state law in order to meet the department's duty to provide for the public safety.

Section 6.45 provides that traditional terms covering the loan of financial assistance, repayment and security will be included.

Section 6.46 provides notice to the public and applicants that additional terms and conditions may be included as the executive director may require.

Subchapter A. General Provisions

43 TAC §§6.1-6.4

The new sections are adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas

Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

§6.1. Purpose.

(a) Transportation Code, Chapter 222, Subchapter D, establishes a state infrastructure bank as an account within the state highway fund, to be administered by the Texas Transportation Commission. The commission shall use money deposited in the bank to:

(1) encourage public and private investment in transportation facilities, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state; and

(2) develop financing techniques designed to:

(A) expand the availability of funding for transportation projects and to reduce direct state costs;

(B) maximize private and local participation in financing projects; and

(C) improve the efficiency of the state transportation system.

(b) This chapter specifies the procedures and conditions by which an eligible entity may apply for and obtain financial assistance from the bank.

§6.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Bank-The state infrastructure bank account in the state highway fund.

Commission-The Texas Transportation Commission.

Construction-A term as defined by Title 23, United States Code, §101, and which includes preliminary studies required to determine the feasibility of an eligible project.

Department-The Texas Department of Transportation.

Design manual-The latest editions of and successors to the:

(A) operations and procedures manual of the design division;

(B) bridge operational planning manual of the design division;

(C) hydraulic manual of the design division;

(D) Texas Manual on Uniform Traffic Control Devices;

(E) standard highway sign designs for Texas; and

(F) traffic control standard sheets booklet of the traffic operations division.

Executive director-The executive director of the Texas Department of Transportation, or his or her designee.

Expected financing period-The time taken to fully pay any and all liabilities incurred to finance an eligible project, including all extensions of time through refunding or restructuring.

Federal Act-Section 350 of the National Highway System Designation Act of 1995 (Public Law Number 104-59) and all rules and regulations adopted under the Act.

Federal-aid highway-A term as defined in Title 23, United States Code, §101.

Financial assistance-A term which includes:

- (A) extending credit by direct loan;
- (B) providing credit enhancements;
- (C) serving as a capital reserve for bond or debt instrument funding;
- (D) subsidizing interest rates;
- (E) insuring the issuance of a letter of credit or credit instrument;
- (F) financing a purchase or lease agreement in connection with a transit project;
- (G) providing security for bonds and other debt instruments; or
- (H) providing methods of leveraging money that have been approved by the United States Secretary of Transportation and which relate to the project for which the assistance is provided.

Investment grade rating-Creditworthiness sufficient to qualify a debt as eligible for commercial bank investment under regulations issued by the Comptroller of the Currency. For bonds, these debts are limited to ratings of "AAA," "AA," "A," and "BBB" by Standard and Poor's Rating Services or corresponding ratings used by other rating services.

Metropolitan planning organization (MPO)-An organization designated in certain urbanized areas to carry out the transportation planning process as required by Title 23, United States Code, §134.

Secondary Funds-A term which includes:

- (A) the repayment of a loan, including interest, principal, fees, charges, or other assistance that is provided with money deposited to the credit of the bank; and
- (B) the investment income generated by secondary funds deposited to the credit of the bank.

Transit project-Capital expenditures, excluding expenditures for commuter rail, eligible for funding under Title 49, United States Code, §5307, §5309, and §5311.

Unified Transportation Program, Priority 1 and Priority 2 designations -That group of transportation programs for which the commission has authorized the department to prepare or complete plans, specifications, and estimates, or acquire right-of-way, or adjust utilities, or be let to contract.

§6.3. General Policies.

- (a) All actions of the bank will be in accordance with applicable federal and state law, and applicable rules and regulations.
- (b) Grant financing will not be considered.
- (c) No actions will be knowingly taken which would result in the bank's credit rating falling below investment grade.

(d) If the bank's credit rating falls below investment grade, the commission will take actions necessary or appropriate to return the bank's credit rating as promptly as practicable to investment grade.

(e) The federal government shall not be obligated by any act of the commission or department under this chapter.

(f) Repayment of any financial assistance from the bank will commence at the earliest reasonable date consistent with applicable federal and state law, rules, and regulations. The term for repaying any financial assistance will not exceed 30 years after the date of the first payment.

(g) The Federal Highway Administration, the Federal Transit Administration, the Comptroller General of the United States, the Texas State Auditor's Office, and the department, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the applicant which are pertinent to any agreement, in order to make audits, examinations, excerpts, and transcripts.

§6.4. Applicability.

The requirements of this chapter do not apply, and the commission may authorize the bank to provide financial assistance, to an eligible project for which an innovative financing proposal has been submitted by the department and approved by the Federal Highway Administration prior to September 1, 1997.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712745

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: September 25, 1997

Expiration date: January 23, 1998

For further information, please call: (512) 463-8630



Subchapter B. Eligibility

43 TAC §6.11, §6.12

This chapter is adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

§6.11. Eligible Entities.

A public or private entity authorized by law to construct, maintain, or finance an eligible project is eligible to apply for financial assistance under Subchapter C of this chapter.

§6.12. Eligible Projects.

(a) The following public or private projects are eligible for financial assistance:

- (1) construction of a federal-aid highway, including required preliminary studies;
- (2) a transit project; or

(3) for the expenditure of secondary funds, a transit project including a project eligible for assistance under Title 49, United States Code, §5310, or the planning, development, construction, maintenance, or operation of a public road, provided that:

(A) the project is eligible for assistance under Title 23 or Title 49, United States Code; and

(B) the department is authorized by state law to provide assistance for the project.

(b) Financial assistance to a private entity shall be limited to an eligible project that:

(1) provides transportation services or facilities that provide a demonstrated public benefit; or

(2) is constructed or operated in cooperation with a state agency or political subdivision in accordance with an agreement between that state agency or political subdivision and a private entity.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712747

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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Expiration date: January 23, 1998

For further information, please call: (512) 463-8630



Subchapter C. Procedures

43 TAC §§6.21–6.24

This chapter is adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

§ 6.21. Department Contact.

The executive director will designate a contact within the department for the purpose of providing information and assistance to potential applicants. Assistance may include non-binding advice, counsel, and consultation regarding all aspects of a possible eligible project. If the executive director determines that the project is otherwise eligible for assistance, that the department is authorized by state law to provide assistance, and that department resources are available, the department may provide engineering and other technical assistance to aid potential applicants in developing an application. Any advice, assistance, or aid provided will not constitute a commitment or liability on the part of the department or the commission. Potential applicants are encouraged to communicate with the contact at the earliest possible date.

§6.22. Requested Financial Assistance.

An applicant may request any form of financial assistance authorized by this chapter. In general, all requests for financial assistance shall be treated as requests for the use of specific sums of money from the bank for certain periods of times at stated interest rates with scheduled

repayments of principal, interest, and any appropriate charges or fees.

§6.23. Application Procedure.

(a) Basic application. An eligible entity shall submit an application to the executive director in a form prescribed by the department. The application must be accompanied by:

(1) an overview of the project, which shall include a description of the project, the total cost of the project and the proposed use of the requested financial assistance;

(2) the amounts of money required to supply the requested assistance (including the needs of any reserve funds which must be established and held by the bank for the applicant's benefit, but which may not be expended from the bank);

(3) any proposed pledge of collateral or security and priority of claim to those items;

(4) a description of the need for the project and potential impact on traffic congestion and mobility; and

(5) the latest bond rating obtained by the applicant when using the sources of revenue to be pledged, or if not applicable, other evidence of creditworthiness similar to that required to obtain a bond rating;

(6) for public roadway projects, a preliminary design study which includes:

(A) an initial route and potential alignments;

(B) the project's logical termini and independent utility;

(C) the location of all right-of-way, facilities and equipment required to make the project functional; and

(D) revisions or changes to state highway system facilities necessitated by the project; and

(7) for transit projects, a preliminary scope study which shall include preliminary layouts, architectural drawings, equipment specifications, and other information necessary to fully describe the project and to comply with all requirements of the Federal Transit Administration.

(b) Supplemental information and data. The applicant shall submit the following supplemental information and data. If the project is in the Unified Transportation Program's Priority 1 or Priority 2 designations, the applicant must submit only that supplemental information and data which the executive director finds relevant to the project and the requested financing. In determining relevant supplemental information and data, the executive director will consider the complexity and size of the project, the type of infrastructure or asset involved, the type and complexity of financial assistance requested, the complexity of the project's and the applicant's financial status, and how soon transportation benefits will begin.

(1) Financial feasibility study. The applicant shall submit a financial feasibility study which must include:

(A) a project construction or asset acquisition schedule identifying the timing, amount, and source of all cash required;

(B) an analysis of the expected financing period of the project;

(C) a pro forma analysis based on cash basis accounting for the expected financing period of the project showing:

(i) anticipated cash revenues to be used in repayment by source;

(ii) anticipated cash disbursements by category including disbursements for operations, maintenance, renewal, and replacement;

(iii) anticipated cash balances at the close of each calendar or fiscal year; and

(iv) cash used to meet the requirements of any sinking funds, reserve funds, and loan amortization payments;

(D) a description of the methods used in preparing the financial feasibility study, the assumptions contained in the study, and persons and entities responsible for the preparation of the study;

(E) the length of time the amounts will be outstanding or obligated;

(F) the anticipated interest rates applicable during the term of the financial assistance;

(G) any interest rate subsidies requested;

(H) the expected savings to the applicant resulting from the assistance; and

(I) a description of how the requested assistance will:

(i) expand the availability of funding for transportation projects;

(ii) reduce direct state costs;

(iii) maximize private and local participation in financing projects;

(iv) improve the efficiency of the state's transportation systems; and

(v) accelerate the project's transportation benefits over conventional financing methods.

(2) Project impacts. The applicant shall conduct studies analyzing the impact of the project. The studies must include:

(A) how the project will be consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by a metropolitan planning organization;

(B) if the project is in a Clean Air Act non-attainment area, how the project will be consistent with the Statewide Transportation Improvement Plan, with the conforming plan and Transportation Improvement Program (TIP) for the metropolitan planning organization in which the project is located (if necessary), and with the State Implementation Plan; and

(C) the economic impact based on a study assessing the potential impact of the project on the economy of the region in which the project is to be located, including the economies of each county in which the project is to be located and of the municipalities within those counties.

(3) Commitments and approvals. The applicant shall obtain commitments and approvals which must include:

(A) official written approval of the project by the governing body of each entity which may become liable for repayment of any financial assistance;

(B) a binding commitment that the environmental consequences of the proposed project will be fully considered, and that the proposed project will comply with all applicable local, state, and federal environmental laws, regulations, and requirements;

(C) a preliminary identification of potential social, economic, and environmental impacts; and

(D) appropriate documentary evidence of community involvement in development of the proposed project and public support for it.

(c) Waiver of required information or data. The executive director may waive submission of individual items of information or data required by this section if:

(1) the information or data required by this section is not relevant to the project, applicant, or the financial assistance requested (in determining relevant supplemental information and data, the executive director will consider the complexity and size of the project, the type of infrastructure or asset involved, the type and complexity of financial assistance requested, the complexity of the project's and the applicant's financial status, and how soon transportation benefits will begin); or

(2) the department already possesses information or data in a format which may be substituted for the required information or data.

(d) Requirement of additional information. The executive director may require the applicant to submit explanations and expansions of information or data required by this section which are relevant to the project, applicant, or financial assistance requested. In determining when additional relevant explanations and expansions of information or data are required, the executive director will consider the complexity and size of the project, the type of infrastructure or asset involved, the type, complexity, and amount of financial assistance requested, and the complexity of the project's and the applicant's financial status.

§6.24. Suspension of Applications.

If the commission determines that bank funding is fully committed or other uncertainties exist which warrant suspension of acceptance of applications, the department may publish a notice in the *Texas Register* providing that applications will no longer be accepted. When conditions change, the commission shall publish a notice in the *Texas Register* that applications are again being accepted.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712749

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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Expiration date: January 23, 1998

For further information, please call: (512) 463-8630

Subchapter D. Department and Commission Action

43 TAC §6.31, §6.32

This chapter is adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

§ 6.31. *Department Action.*

(a) Notification. The department will review the application submitted under Subchapter C. When the application is complete, the department will so notify the applicant.

(b) Analysis. The executive director will perform an analysis of the application to support findings and recommendations for the commission. The executive director will submit the application together with findings and recommendations to the commission.

§ 6.32. *Commission Action.*

(a) Commission analysis. The commission will determine the sufficiency of the information, the probable reliability of the projections, and the anticipated financial condition of the applicant and the project.

(b) Preliminary approval.

(1) Considerations. Prior to granting preliminary approval of an eligible project, the commission will consider:

- (A) whether the project is on the state highway system;
- (B) transportation need for and anticipated public benefit of the project;
- (C) the present and projected financial condition of the bank;
- (D) potential social, economical, and environmental impacts;
- (E) conformity with the purposes of the bank; and
- (F) evidence of local public support.

(2) Project requirements. The commission may grant preliminary approval to a project for bank financing if it finds that:

- (A) the project is consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by a metropolitan planning organization;
- (B) if the project is in a Clean Air Act non-attainment area, the project will be consistent with the Statewide Transportation Improvement Plan, with the conforming plan and Transportation Improvement Program (TIP) for the metropolitan planning organization in which the project is located (if necessary), and with the State Implementation Plan;
- (C) the project will improve the efficiency of the state's transportation systems;
- (D) the project will expand the availability of funding for transportation projects or reduce direct state costs; and
- (E) the application shows that the project and the applicant are likely to have sufficient revenues to assure repayment

of the financial assistance according to the terms of the agreement. In making this finding, the commission will consider:

- (i) the probable ability of any pledged revenues to meet all obligations of the project and to repay the financial assistance to the bank;
- (ii) management of the project;
- (iii) adequacy of working capital and operating funds;
- (iv) collateral and other guarantees of repayment;
- (v) how quickly the financial assistance will be repaid; and
- (vi) the presence of credit insurance or other guarantees.

(3) Authorized actions. By granting preliminary approval, the commission authorizes the executive director to negotiate:

- (A) the project's limits, scope, definition, design, and any other factors which might impact the financing of the project;
- (B) the amount, type and timing of disbursements of financial assistance;
- (C) interest rates including subsidies;
- (D) fees;
- (E) charges;
- (F) repayment schedules;
- (G) term to maturity of any financial assistance;
- (H) collateral securing the financial assistance;
- (I) appropriate covenants applicable to the financial assistance;
- (J) default provisions; and
- (K) all other provisions necessary to complete an agreement under Subchapter E of this Chapter.

(c) Social, economical, and environmental impact.

(1) Prior to receiving final approval under subsection (d) of this section, the department or the applicant shall complete a study of the social, economical, and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, Title 42, United States Code, §§4321 et seq. and Title 23, United States Code, §109(h), and shall provide for public involvement and meet all other requirements of Chapter 2, Subchapter C of this title (relating to Environmental Review and Public Involvement For Transportation Projects).

(2) For a project not on the state highway system, the applicant shall be responsible for completing required studies of social, economical, and environmental impacts unless the applicant and the department agree otherwise. If the department agrees to be responsible for these studies, then any costs will be charged according to the department's local participation agreement.

(3) For a project on the state highway system, the department shall be responsible for completing required studies of social, economical, and environmental impacts with any costs to be charged to the project.

(d) Final approval. Subsequent to preliminary approval under subsection (b) of this section, the completion of negotiations under subsection (b)(3) of this section, and the approval of the social, economical, and environmental impact required by subsection (c) of this section, the commission may grant final approval if it determines that:

(1) providing financial assistance will protect the public safety and prudently provide for the protection of public funds while furthering the purposes of this chapter; and

(2) the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

(e) Postponement. The commission may postpone final approval if it finds that the current or projected financial condition of the bank warrants this action.

(f) Contingencies. The commission may make its preliminary or final approval contingent upon the applicant making changes, levying taxes, performing other acts, or maintaining certain conditions necessary to provide for adequacy of repayments.

(g) Order of approval or disapproval. Approval or disapproval of the project, whether preliminary or final, shall be by written order of the commission, and shall include the rationale, findings, and conclusions on which approval or disapproval is based.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712751

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



Subchapter E. Financial Assistance Agreements

43 TAC §§6.41–6.46

This chapter is adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

§6.41. Executive Director.

The executive director will negotiate the terms of agreements deemed necessary to comply with any requirements of preliminary approval, to protect the public's safety, and to prudently provide for the protection of public funds while furthering the purposes of this chapter. These agreements shall include, but not be limited to, terms provided for in this subchapter, as applicable to the nature of the project.

§6.42. Performance of Work.

(a) Work performed by the department. The department may, in its discretion and consistent with state law, provide all or part of the work connected with the project in the department's normal course

of business. For work performed by the department, the following provisions will apply.

(1) The department will account for all costs of the project in the normal course of business as it does for all federal-aid eligible projects.

(2) The department will make progress payments or set aside funds from the bank on behalf of the applicant as the department deems necessary. Such actions shall bind the applicant to repayment according to the terms of the agreement(s). Interest shall accrue from the date of the payment or setting aside of funds.

(3) The department's actions and decisions regarding the project shall not be contestable by the applicant.

(4) The applicant shall provide the department, the Federal Highway Administration, and the Federal Transit Administration, or their authorized representatives, with right of entry or access to all properties or locations necessary to perform activities required to execute the work, inspect the work or aid otherwise in the prompt pursuit of the work.

(b) Work performed by applicant. The department may, in its discretion and consistent with state law, provide that the applicant conduct all or part of the work connected with the project. For work performed by the applicant, the following provisions apply.

(1) The applicant shall comply with the federal act, Title 23, United States Code, Title 49, United States Code, other applicable state and federal law, and all terms and conditions of any agreements. Where approval or concurrence of the Federal Highway Administration, the Federal Transit Administration, or other federal agency is required, the applicant shall seek such action through the department. The applicant shall reimburse the department for any loss of federal funds to the department resulting from the applicant's failure to comply.

(2) The applicant shall maintain project records and accounts in accordance with generally accepted accounting principles, and all applicable federal and state requirements.

(3) The applicant shall, at the applicant's cost, have a full audit performed annually of the project records and accounts by an independent certified public accountant. The applicant shall cause the auditor to provide a full copy of the audit report and any other management letters or auditor's comments directly to the department.

(4) The applicant shall hold all project records, accounts, and supporting documents open for state or federal audits until project completion.

(5) Upon completion of the project, the applicant shall forward to the department all project files as prescribed by the department. The department shall retain these files until all financial assistance has been repaid and necessary audits have been performed.

§ 6.43. Design, Construction, and Procurement Standards.

(a) Plans and specifications. For federal-aid and state highway improvement projects, plans and specifications must be in compliance with the design manuals and the latest version of the department's standard specifications for construction of highways, streets, and bridges. All construction plans shall be signed and dated by a professional engineer registered in Texas.

(b) Change orders. The department may require standards and procedures to be used in making any design change orders.

(c) Transit projects must comply with all requirements established under §§31.42-31.47 of this title (relating to Program Administration).

§ 6.44. *Maintenance and Operations.*

(a) Maintenance. When funds for repayment are derived from fees or tolls on the project, or the project or asset is collateral for the financial assistance, the department may require standards and procedures to be used in maintenance of the project.

(b) Speed limits. If applicable, speed limits shall be posted in accordance with procedures used by the department for the state highway system, but in no case shall such limits exceed the maximum prima facie speed limits prescribed by state law for a public road having the same characteristics.

§6.45. *Financial and Credit Requirements.*

The applicant shall agree to:

(1) provide collateral and security for repayment, or other protections as the executive director may deem necessary;

(2) repay the financial assistance at specified interest rates over specified time periods according to repayment schedules and including agreed upon bank fees or compensation;

(3) abide by provisions governing default;

(4) have periodic audits in compliance with all applicable federal and state requirements; and

(5) reimburse the department for all costs or losses of funds resulting from a failure to perform by the applicant.

§ 6.46. *Other Requirements.*

Depending on the facts and circumstances of each project, the applicant, and type of financial assistance provided, the executive director may require additional terms and conditions necessary to protect the public safety, prudently provide for the protection of public funds, and further the purposes and requirements of this chapter.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712753

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 111. Executive Administration Division

Historically Underutilized Business Certification Program

1 TAC §111.21, §111.23

The General Services Commission proposes amendments to §111.21 and §111.23 to update the Historically Underutilized Business ("HUB") Program's certification review process. In September 1995, the HUB Certification and Compliance Program evolved to a mid-level certification process requiring all applicants to submit documentation to assist the General Services Commission in determining if an applicant meets the HUB eligibility requirements (i.e., ethnicity, ownership, active participation, control and graduation). The HUB Program is responsible for determining the eligibility of all applicants through a certification or compliance review. For this reason, we are proposing amendments to §111.21 and §111.23 in order to ensure the HUB rules reflect the certification and compliance review process.

David Gragan, Director, Executive Business Administration, has determined that for the first five-year period the amendments are in effect there is no economic impact to the state or local government as a result of enforcing these rules.

David Gragan, Director, Executive Business Administration, has determined that for each year of the first five year period these rules are in effect the public benefit as a result of enforcing these rules will be that the public and General Services Commission customers will receive clarification of how the Commission administers the certification and compliance review process to determine HUB eligibility. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposals may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal to the *Texas Register*.

The General Services Commission proposes these amendments in accordance with the Texas Government Code, Title 10, Subtitle D, Chapter 2161, which authorizes the Commission to administer the HUB Program.

The following statute is affected by these amendments: Texas Government Code, Title 10, Subtitle D, Chapter 2161.

§111.21. Certification and Compliance Reviews.

(a) The commission will conduct [random] certification reviews of applicants and **random compliance reviews of** certified businesses by auditing them to verify [that] the information submitted by a business is accurate, and [that] the business **continues to meet all HUB eligibility requirements** [remains eligible] after certification has been granted. Certification is subject to revocation if it is determined that a business does not qualify as an historically underutilized business. Certification **and compliance** reviews **of** [may be conducted for] any business **may be conducted upon determining** [for which the commission determines] a [certification] review is warranted.

(b) Businesses subject to certification **and compliance** reviews must provide the commission with any information requested to verify the certification eligibility of the business.

(c) **In order to be qualified, the applicant's business documentation shall be reviewed to substantiate an applicant's level of participation and control, and must demonstrate responsibility in the critical areas of the business' operation. Eligible owners must be able to make independent and unilateral business decisions which guide the future and destiny of the business, and must be proportionately responsible for the direction and management of the business. Absentee or titular ownership by eligible owners who do not take an active role in controlling and participating in the business is not consistent with the definition of a HUB.**

(d) Meet all other certification and compliance requirements identified in the Commission's HUB Policies and Procedures used to determine eligibility.

§111.23. Graduation Procedures.

(a) A HUB shall be graduated from being used to fulfill HUB procurement utilization goals when it has maintained gross receipts or total employment levels during four consecutive years which exceed the U.S. Small Business Administration's size [standard] **standards** for firms within similar primary four-digit Standard Industrial Classification codes as stated in 13 Code of Federal Regulations 121.201 for the following categories:

(1)-(6) (No change.)

(7) commodities [wholesale] **wholesalers** ;

(8) (No change.)

(b) Firms which have achieved the size standards identified in subsection (a) of this section will be assumed to have reached a competitive status in overcoming the effects of discrimination. The commission shall review as part of the certification , **compliance** or recertification process the financial revenue or relevant data of firms to determine whether the size standards identified in subsection (a) of this section have been met.

(c) (No change.)

(d) The General Services Commission shall review **the** U.S. Small Business [Administration] **Administration's** size standards each Fiscal Year to determine the need to reassess HUB graduation size standards and make changes effective September 1 of each Fiscal Year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712891

Judy Ponder

General Counsel

General Services Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-3960



Cost of Copies of Public Information

1 TAC §111.63, §111.67

The General Services Commission proposes the amendments of §111.63 and §111.67, relating to charges for copies of public information. The amendments will bring the sections into compliance with amendments to the Texas Government Code, Chapter 552, (the "Texas Open Records Act"), enacted by House Bill (H.B.) 951, 75th Legislature, Regular Session.

Ms. Hadassah Schloss, Open Records Administrator, has concluded that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of implementing these amendments.

Ms. Hadassah Schloss has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated will be rules that are in compliance with the Texas Open Records Act that will allow all governmental bodies ten business days instead of ten calendar days to provide access and copies of public information. There will be no cost to small or large businesses and/or individuals who are required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Government Code, Chapter 552, Subchapter F, §552.262, (the "Texas Open Records Act") which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following statute is affected by these amendments: Texas Government Code, Title 10, Subtitle D.

§111.63. Charges for Providing Copies of Public Information.

(a)-(b) (No change.)

(c) Programming personnel. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1)-(2) (No change.)

(3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Government Code, Chapter 552, §552.261(b).

(d) Other Personnel charge.

(1)-(4) (No change.)

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Government Code, Chapter 552, §552.261(b).

(e)-(f) (No change.)

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission[, which is equipped to provide such a service to state agencies free of charge]. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services.

(2) (No change.)

(h)-(l) (No change.)

§111.67. Estimates and Waivers of Public Information Charges.

(a) (No change.)

(b) A governmental body that cannot produce the public information for inspection and/or duplication within ten **business** [calendar] days after the date the information is requested, shall certify to that fact in writing, and set a date and hour within a reasonable time when the information will be available.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712819

Judy Ponder

General Counsel

General Services Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-3960



Chapter 113. Central Purchasing Division

The General Services Commission proposes amendments to §§113.1, 113.4, 113.8, 113.10, 113.11, and 113.19, concerning Purchasing, new §113.100 and §113.102, concerning Vendor Performance and Debarment Program, and new §113.125, concerning Buying Under Contract Established by an Agency Other Than the General Services Commission. The amendments and new sections allow for implementation of Senate Bill (S.B.) 1752 and House Bill (H.B.)1805, 75th Legislature, Regular Session (1997) which streamline and enhance the efficiency of the state procurement system.

David P. Gagan, Director, Central Procurement Services Division, has determined that for the first five-year period the amendments and new sections are in effect there will be no effect to state or local government as a result of enforcing the rules.

David P. Gagan, Director, Central Procurement Services Division, has determined that for each year of the first five year period the amendments and new sections are in affect, the public benefit anticipated as a result of enforcing the rules will be that there will be more access to state bidding opportunities, thus promoting lower bid prices and making the purchasing system more efficient for the use of businesses utilizing the system. There will be no adverse effect on small business. There is no anticipated added economic cost to persons who are required to comply with the amendments and new sections to 1 TAC, Chapter 113, as proposed.

Comments on the proposals may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Capitol, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposals to the *Texas Register*.

Purchasing

1 TAC §§113.1, 113.4, 113.8, 113.10, 113.11, 113.19

The amendments are proposed under the Texas Government Code, Title 10, Subtitle D, §2152.003 that was enacted by S. B. 1752, Acts of the 75th Legislature, R.S. (1997).

The following statute is affected by these amendments: Texas Government Code, Title 10, Subtitle D.

§113.1. General.

(a) - (e) (No change.)

(f) If an agency desires to use the Commission's services for a delegated or exempt purchase, a written request shall be made in a manner and form determined by the Director of Central Procurement Services Division and containing information the Director deems relevant to the purchase and processing of the request. Such service shall be by cost recovery and the Director shall determine and include all relevant factors related to providing the service on a cost basis. In no event shall non-delegated purchases be placed in jeopardy by the processing of delegated or exempt purchases.

(g) The Director of the Central Procurement Services Division is delegated the authority to establish purchasing advisory committees as set forth in paragraphs (1) and (2) of this subsection:

(1) An Advisory Committee on Procurement authorized under Texas Government Code, §2155.080.

(2) A Vendor Advisory Committee authorized under Texas Government Code, §2155.081.

§113.4. Centralized Master Bidders List.

(a) - (b) (No change.)

(c) The commission will review and evaluate the CMBL application, and may reject an [the] application **that is not satisfactorily completed**. [based on one or more of the following factors:]

[(1) the ability, capacity, and skill of the vendor to perform as required;

[(2) the character, responsibility, integrity, reputation, and experience of the vendor;

[(3) the quality of performance of previous contracts;

[(4) compliance by the vendor with laws relating to the contract;

and [(5) the sufficiency of the vendor's financial resources;

[(6) the ability of the vendor to provide future maintenance.]

(d) A vendor may be removed [or temporarily suspended] from the CMBL for one or more of the following reasons:

[(1) failing to make delivery as promised;

[(2) making unauthorized substitutions;

[(3) misrepresenting merchandise;

[(4) failing to make satisfactory adjustments when required;

[(5) unethical actions;]

[(1) [(6)] failing to pay or unnecessarily delaying payment of damages assessed by the commission;

[(7) failing to furnish a bond when required;]

(2) [(8)] failing to submit bids in response to bid invitations on either:

(A) four consecutive open market invitations concerning the affected class or item; or

(B) one or more contract or schedule invitations concerning the affected class;

(3) [(9)] failing to remit the biennial CMBL maintenance fee; or

[(10)] being or becoming unable to provide a commodity or service for which the vendor is enrolled on the CMBL, provided that removal will affect only the commodities or services which the vendor is unable to provide; or]

(4) [(11)] any factor **set forth in Government Code, Chapter 2155, §2155.070 and §2155.077** [listed in subsection (c) of this section.]

(e) A vendor which has been **removed** [temporarily suspended] from the CMBL **shall not be reinstated until expiration of period for which the vendor was removed and approval is granted by the commission's Director, Central Procurement Services.** [may be reinstated by promptly correcting the reasons for suspension. A failure to make the necessary correction promptly may result in the vendor's removal from the CMBL. If removed, the vendor shall not be reinstated unless a written request for reinstatement is granted by the Director of Purchasing, General Services Commission.]

(f) (No change.)

(g) **State**[Effective September 1, 1995, state] agencies/universities shall use the CMBL to select bidders for competitive bids or proposals **and to the fullest extent possible for purchases exempt from the commission's purchasing authority .**

(h) (No change.)

§113.8. Preferences.

(a) (No change.)

(b) Preferences.

(1) - (2) (No change.)

(3) **Historically Underutilized Business** [Disadvantaged business enterprises]. A preference shall be given to **historically underutilized business (HUB)** [disadvantaged business enterprises (DBEs)] which are certified as **HUBs** [DBEs] by the commission when the cost and quality of goods or services are equal.

(4) Products of persons with mental or physical disabilities. A preference shall be given to manufactured products of workshops, organizations, or corporations whose primary purpose is training and employing persons with mental or physical disabilities, if the products meet state specifications as to quantity, quality, and price. Competitive bids are not required for purchases of blind-made goods or services offered as a result of efforts by the Texas Council on Purchasing from People with Disabilities, if the goods or services meet state specifications as to quantity, quality, **price, delivery, life cycle costs, and costs no more than the fair market price of similar items.**[and price.]

(5) - (8) (No change.)

§113.10. Term Contracts.

(a) The commission enters into term contracts for the purchase or lease of items used in large quantities by several state agencies. The term of the contract is determined by the commission; usually, the term is 12 months.

(1) - (2) (No change.)

(3) Awards.

(A) (No change.)

(B) Performance bonds **may** [will] be required for each award exceeding \$100,000.

(4) (No change.)

(b) (No change.)

§113.11. Delegated Purchases.

(a) General delegation. The following purchasing functions are delegated to agencies:

(1) **commodity purchases of goods** [spot purchases (purchases of goods or services)] that do not exceed **\$25,000** [\$15,000)];

(2) - (7) (No change.)

(b) (No change.)

(c) Provisions generally applicable to delegated purchases.

(1) Competitive bidding is not required for purchases of **\$2,000** [\$1,000] or less.

(2) - (3) (No change.)

(4) **The commission** [Agencies] must solicit formal bids from all eligible vendors on the centralized master bidders list (CMBL) when making purchases in excess of [\$15,000] **\$25,000.** **The** [However, for purchases of \$25,000 or less, the] commission **waives** [may waive] the requirement **for state agencies to solicit bids from all eligible vendors on the list when making purchases up to \$25,000 under subsection (e)(1) and (4) of this section.** [if the agency certifies in writing that a solicitation of all eligible vendors is not warranted under the circumstances.] **State agencies must solicit from all eligible vendors on the CMBL when making service purchases in excess of \$100,000 that the commission has determined should be advertised and awarded by the agency.**

(5) (No change.)

(6) **For purchases over \$100,000, agencies shall consult with and receive approval of the commission for use of factors for bid evaluation other than price and meeting specifications.**

(d) Withdrawal of delegated purchase authority. The commission will verify compliance with established procedures and will withdraw delegated purchase authority from an agency for continued violations after giving adequate warning. **The commission will report to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board the findings that a state agency has not followed the commission's rules or the laws related to the delegated purchases.**

(e) Provisions applicable to particular delegated purchases.

(1) **Commodity** [Spot] purchases. **Commodity** [spot] purchases may be made in accordance with the following provisions.

(A) Agencies must attempt to obtain at least three informal bids, including a minimum of two bids from historically under-

utilized businesses (including at least one bid each from a minority-owned business and a woman-owned business), on all **commodity** [spot] purchases in excess of **\$2,000** [\$1,000] and not over \$5,000. **Agencies must meet competitive bidding requirements and may supplement the list of bidders obtained from the CMBL and Historically Underutilized Business (HUB) Directory with non-CMBL bidders if the purchase price does not exceed \$5,000.** Agencies must attempt to obtain at least three formal bids, including a minimum of two bids from **HUBs** [historically underutilized businesses] (including at least one bid each from a minority-owned business and a woman-owned business), on all **commodity** [spot] purchases in excess of \$5,000 and not over **\$25,000**. [\$15,000.] Agencies may refer to the commission's **HUB** [Certified Historically Underutilized Business] Directory, which is maintained and accessible electronically, to locate historically underutilized businesses. If an agency is unable to locate a minority-owned business and/or a woman-owned business from the commission's **HUB** [Certified Historically Underutilized Business] Directory or other available sources, the agency must make a written notation **in the purchase file** [on the spot purchase form] of all reference sources used.

(B) All information required by the commission must be furnished on the approved commodity [spot] purchase form.

(2) Emergency purchases. The commission will approve payment for emergency purchases in accordance with the following provisions.

(A) At least three informal bids must be obtained whenever possible on all purchases in excess of \$5,000.

(B) **For an emergency purchase of goods or services exceeding \$25,000, an agency must send** [The emergency purchase file, when forwarded to the commission, must contain] a full written explanation of the emergency along with other documentation required by the commission **for prepayment approval.**

(C) The agency may contact the commission for advice and assistance in the handling of emergency purchases. The commission may not approve an invoice for an emergency purchase unless the agency has complied with the foregoing requirements. This rule does not apply to purchases made in accordance with the **Texas Government Code, Chapter 418**. [Texas Disaster Act of 1975 (Texas Civil Statutes, Article 6889-7).]

(3) (No change.)

(4) Services. Purchases of services estimated to cost no more than \$100,000 per year are delegated and must be obtained through competitive bids, and appropriate documentation must be forwarded to the commission for approval. **An agency is** [If an agency is certified under subsection (g) of this section, it is] required to submit documentation **to the commission** [only] for proprietary purchases of services **over \$25,000** and for purchases expected to cost more than \$25,000 **per year. For purchases of services estimated up to \$25,000, state agencies shall solicit a minimum of three bids (two must be HUBs, one minority and one woman owned business) from CMBL and HUB Directory Vendors located in the agencies' geographic region. For purchases of services estimated more than \$25,000 and less than \$100,000, state agencies shall, as a minimum, solicit bids from all CMBL and HUB Directory Vendors located in the agencies' geographic region.** For purchases of services estimated to cost more than \$100,000 per year, the commission must review any proposed specifications or statements

of work and determine whether the commission or the agency should make the advertisement and award. The commission may determine that the service should be advertised to the commission's bidders lists, in which case the commission will make the award in accordance with normal open market procedures. If no competitive advantage would be obtained by having the commission make the advertisement and award, the commission may permit the agency to do so.

(5) - (7) (No change.)

(f) (No change.)

(g) **Protest Procedures. State agencies shall adopt protest procedures and submit a copy to the commission during the post-payment audit of the agency's purchasing documents or upon request by the commission.**

(h) **Procurement Plan. State agencies shall formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidance contained in the Commission's Procurement Manual. An agency must submit a copy of the procurement plan during the commission's audit of the agency's purchasing documents or upon request by the commission.**

(i) **Debarred Vendors. State agencies shall ensure that debarred vendors do not participate in state contracting and will establish procedures to ensure awards are not made to debarred vendors.**

(j) **Reporting Purchasing Activity under Delegated Authority. State agencies will report to the commission, not later than May 1 of each year regarding the previous six-month period and on November 1 of each year regarding the preceding fiscal year, information related to delegated purchasing activity for goods and services in the form prescribed by the commission.**

§113.19. Catalogue Purchase Procedure for Automated Information Systems.

(a) Upon registration on the commission's **Centralized Master Bidders List (CMBL)** [bidders list], a vendor wishing to sell or lease automated information systems to [eligible purchasers] **governmental entities** in accordance with this rule shall apply to the commission for designation as a qualified information systems vendor (QISV) by completing and submitting an application and catalogue.

(b) **In this section a governmental entity is a state agency subject to the Information Resources Act (Texas Government Code, Title 10, Subtitle B, Chapter 2054) or a local government entity that participates in the Cooperative Purchasing Program under the Texas Local Government Code, Title 8, Subtitle C, Subchapter D.**

[(b) An application must include the following:

[(1) the vendor's maintenance, repair and support plan for all eligible products and services;

[(2) proof of the vendor's financial resources and ability to perform;

[(3) a guarantee that the vendor will make available repair and replacement parts as well as technical information required for repair of products sold for at least three years from the date of a product's discontinuance;

[(4) a statement detailing the geographic area in Texas to which the vendor desires to market catalogue products and services;

[(5) a statement certifying that:

[(A) the vendor has reviewed the rules promulgated by the Department of Information Resources (DIR) and that all products and services offered in the vendor's catalogue conform and comply with all applicable standards adopted by the DIR;

[(B) the vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with catalogue purchase transactions;

[(C) the vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas under Tax Code, Chapter 171;

[(D) the vendor assigns to purchaser any and all claims for overcharges associated with any catalogue transaction which arise under the antitrust laws of the United States or the State of Texas; and

[(E) the vendor will protect eligible purchasers from claims involving infringement of patents or copyrights;

[(6) a statement acknowledging that any terms and conditions in the vendor's catalogue that conflict with the Constitution or laws of the State of Texas shall not be enforceable and, therefore, will not be binding;

[(7) the name, address, telephone number and point of contact for three customer references; and

[(8) the signature of the vendor's authorized representative.]

(c) An application must include the following:

(1) the vendor's maintenance, repair and support plan for all eligible products and services;

(2) proof of the vendor's financial resources and ability to perform;

(3) a guarantee that the vendor will make available repair and replacement parts as well as technical information required for repair of products sold for at least three years from the date of a product's discontinuance;

(4) a statement detailing the geographic area in Texas to which the vendor desires to market catalogue products and services;

(5) a statement certifying that:

(A) the vendor has reviewed the rules promulgated by the Department of Information Resources (DIR) and that all products and services offered in the vendor's catalogue conform and comply with all applicable standards adopted by the DIR;

(B) the vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with catalogue purchase transactions;

(C) the vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas under the Texas Tax Code, Title 2, Subtitle F, Chapter 171;

(D) the vendor assigns to purchaser any and all claims for overcharges associated with any catalogue transaction which arise under the antitrust laws of the United States or the State of Texas; and

(E) the vendor will protect governmental entities from claims involving infringement of patents or copyrights;

(6) a statement acknowledging that any terms and conditions in the vendor's catalogue that conflict with the Constitution or laws of the State of Texas shall not be enforceable and, therefore, will not be binding;

(7) the name, address, telephone number and point of contact for three customer references;

(8) the signature of the vendor's authorized representative;

(9) the date the application was signed; and

(10) the vendor's catalogue's universal resource locator (URL) in accordance with subsection (o) of this section.

[(c) The State of Texas is committed to assisting historically underutilized businesses (HUBs) to receive at least 30% of the total value of all state business transactions. If the vendor is certified as a Texas HUB, the vendor shall provide its five-digit certification number in the application. If the vendor qualifies as a HUB, but is not certified by the State of Texas as such, the vendor should contact the commission to obtain a certification application. Upon the request of eligible purchasers, the vendor will be required to detail the amount of expenditures that have been made to material suppliers and subcontractors that are Texas certified HUBs. A vendor that has demonstrated past HUB participation is still expected to provide documentation using the reporting forms provided by eligible purchasers to show its good faith effort in achieving the state's 30% goal.]

(d) Upon receipt of a properly completed application [and catalogue], the **Director of Central Procurement Services Division** [director for purchasing] or the director's designee shall give consideration to the following standards and criteria when deciding to designate a vendor as a [qualified information systems vendor] **QISV**.

(1) the technical adequacy and reliability of the vendor's products as demonstrated by conformity to all state and federal requirements, including but not limited to ANSI, FCC, NEMA, OSHA and UL standards;

(2) **award criteria** [all factors] set forth in the Texas Government Code, **§2156.007** [§2156.006];

(3) the vendor's past and current status on the commission's **CMBL** [bidders list] and any unresolved complaints on record; and

(4) the ability of the vendor, as determined by the commission in its sole discretion, to provide adequate and reliable support and maintenance, currently and in the future, for all products and services detailed in the vendor's catalogue for the geographic area in Texas to which the vendor desires to market products and services.

(e) An application that is incomplete or that contains inaccurate information will not be approved, and the vendor will be notified of corrections needed.

[(e) A vendor designated as a qualified information systems vendor shall be notified in writing of the designation by the commission. Once designated as a qualified information systems vendor, the vendor shall publish and maintain a catalogue listing all products and services available for purchase. Catalogues shall be provided to all eligible purchasers upon request.]

(f) Each vendor's catalogue shall:

- (1) describe all products or services eligible for purchase;**
- (2) include the list price of each product or service;**
- (3) show the discounted price to the state for each product or service;**
- (4) include an effective date;**
- (5) provide necessary ordering information (vendor name, ordering address, points of contact, phone numbers, etc.);**
- (6) contain the statement: "This is a true and accurate copy of the catalogue approved through the General Services Commission;" and**
- (7) be maintained on a website in accordance with subsection (o) of this section and include indexing and keywords consistent with the commission's web catalogue guidelines. The vendor's catalogue maintained on the website and in compliance with this rule shall be the official version of the catalogue.**

[(f) An application that is incomplete or that contains inaccurate information will not be approved, and the vendor will be notified of corrections needed.]

(g) A vendor designated as a QISV shall be notified of the designation by the commission. Once designated as a QISV, the vendor shall maintain a catalogue listing all products and services available for purchase. The QISV shall provide catalogues to all governmental entities upon request.

[(g) Each catalogue supplied by a vendor shall:

- [(1) describe all products or services eligible for purchase;
- [(2) include the list price of each product or service;
- [(3) show the discounted price to the state for each product or service;
- [(4) include an effective date;
- [(5) provide necessary ordering information (vendor name, ordering address, points of contact, phone numbers, etc.); and
- [(6) contain the statement: "This is a true and accurate copy of the catalogue approved and on file with the General Services Commission."]

(h) The vendor shall update its catalogue as needed to reflect changes in price and the availability of products or services offered. Updates may be in the form of amendments to the current catalogue or issuance of supplemental catalogues in compliance with subsection (g) of this section and in a manner required by the commission. It shall be the responsibility of

the individual purchaser/governmental entity and the vendor to ensure that QISV catalogues are current and include all updates.

[(h) The vendor is encouraged to print their catalogue on recycled paper and to itemize or otherwise identify any and all automation information systems products which:

[(1) contain recycled or remanufactured parts, including the percentage of the total product that is recycled or remanufactured and the percentage of recycled material; and

[(2) possess energy saving features.]

(i) The vendor must provide the commission an annual report to maintain its qualification status. The report, due by the 15th of September, shall include the following information for the preceding year (ending August 31st):

- (1) each governmental entity's identity;**
- (2) the purchaser's requisition or purchase order number and its date;**
- (3) the value of the order; and**
- (4) total value of all orders.**

[(i) The vendor shall update its catalogue as needed to reflect changes in price and the availability of products or services offered. Updates may be in the form of amendments to the current catalogue or issuance of supplemental catalogues in compliance with subsection (g) of this section . Copies of updated catalogues shall be provided to the commission and all eligible purchasers who have previously been provided catalogues.]

(j) Failure of a vendor to provide the required annual reports, to remain active on the CMBL, or failure to conform to any other commission rules may result in suspension or removal of QISV status. A vendor that has been suspended or removed may not market or sell products or services from their QISV catalogue to the state until the cause of the suspension or removal has been resolved.

[(j) Each vendor is encouraged to make its catalogue available to eligible purchasers using an electronic format to allow electronic data interchange.]

(k) The vendor shall retain all records related to any business transaction under the catalogue purchase procedure for automated information systems for five years from the date of the purchase order. The records shall be provided upon request to the commission or the actual purchaser.

[(k) The vendor must provide the commission with the following information to maintain its qualification status:

[(1) semiannual reports, due to the commission by the 15th of March and September, detailing the volume and value of orders placed by each eligible purchaser during the preceding six calendar months, showing:

[(A) the eligible purchaser's identity; and

[(B) the purchaser's requisition or purchase order number and its date.]

(l) Preference shall be given to QISV's who sell or lease products or services pursuant to the Texas Government Code, §2155.441.

[(l) Failure of a vendor to provide required reports, or failure to conform with any other commission rules may result in suspension or removal from the commission's bidders list. A vendor that has been suspended or removed may not market or sell products or services to the state until the cause of the suspension or removal has been resolved. and the vendor reinstated to the commission's bidders list.]

(m) **The vendor is encouraged to:**

(1) **produce products that contain recycled or remanufactured parts, and to itemize or otherwise identify these products including the percentage of the total product that is recycled or remanufactured and the percentage of post-consumer recycled material;**

(2) **possess energy saving features; and**

(3) **use recycled/recyclable paper if printing a catalogue.**

[(m) The vendor shall retain all records related to any business transaction under the catalogue purchase procedure for automated information systems for five years from the date of the purchase order. The records shall be provided on request to the commission or the actual purchaser.]

(n) **The State of Texas is committed to assisting historically underutilized businesses (HUBs) to receive a portion of the total value of all contracts that an agency will award. If the vendor qualifies as a HUB, but is not certified by the State of Texas as such, the vendor should contact the commission to obtain a HUB certification application. Upon the request of a governmental entity, the vendor will be required to detail the amount of expenditures that have been made to material suppliers and subcontractors that are Texas certified HUBs. A vendor that has demonstrated past HUB participation is still expected to provide documentation using the reporting forms provided by a governmental entity to show its good faith effort in meeting or exceeding the state's procurement utilization goals identified in GSC's HUB Rules (1 TAC §111.14).**

[(n) Preference shall be given to qualified information systems vendors who sell or lease products or services pursuant to the Texas Government Code, §2155.441.]

(o) **Once the process for utilizing URL's has been established and is operational, the GSC will create deadlines whereby all QISV's must provide the GSC with their URL.**

[(o) In this section an eligible purchaser is a state agency subject to the Information Resources Act (Texas Government Code, §§2054.001 et seq.) or a local government that participates in the Cooperative Purchasing Program under Texas Local Government Code, §§271.081 et seq.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 26, 1997.

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Judy Ponder

General Counsel

General Services Commission

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For further information, please call: (512) 463-3960



Vendor Performance and Debarment Program

1 TAC §113.100, §113.102

The new sections are proposed under the Texas Government Code, Title 10, Subtitle D, §2152.003 that was enacted by S. B. 1752, Acts of the 75th Legislature, R.S. (1997).

The following statute is affected by these new sections: Texas Government Code, Title 10, Subtitle D.

§113.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Debarment - **An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in this chapter, commensurate with the seriousness of the offense, performance failure, or inadequacy of performance.**

Successor-in-interest - **Any business entity that is substantially similar to a business entity that was previously debarred. For purposes of this chapter, it shall be presumed that a business entity that employs, or is associated with, any partner, member, officer, director, responsible managing officer, or responsible managing employee, or a business entity that was previously debarred is a successor-in-interest.**

§113.102. Vendor Performance and Debarment.

(a) The commission shall remove a vendor's name from the commission's Centralized Master Bidders List for no less than three months and not longer than one year for repeated complaints against the vendor. If complaints resume after the vendor is reinstated on the bidders list, the commission may bar the vendor from participating in state contracts for a period that is commensurate with the seriousness of the vendor's action and the damage to the state's interests.

(b) The commission shall adopt a measurement to evaluate a vendor's past performance as an indicator of a vendor's ability to perform under a state contract for purchases or other acquisitions under Government Code, Chapters 2155-2158;

(1) As a minimum, the commission shall consider the number and severity of an offeror's performance problems in relation with volume of goods or services provided, the effectiveness of corrective actions taken by the vendor, and the age and relevance of past performance information at the time it is used;

(2) Firms lacking relevant past performance history shall receive a neutral evaluation for past performance in state contracting.

(c) The Director, Central Procurement Services shall establish standard policies and procedures for vendor performance criteria used in the evaluation of delegated and non-delegated purchases. In the evaluation process for delegated purchases, agencies must accurately document the vendor performance criteria used in determining the successful bidder or offeror.

(d) When in the best interest of the State, the commission may debar a business entity or a successor-in-interest for any of the following:

(1) A history of unsatisfactory performance of a contract, or a history of failure to perform contracted services.

(2) Stating an unwillingness to honor a binding bid.

(3) Knowingly and intentionally supplying false information in order to appear responsive to a solicitation, to obtain a contract, or to qualify for a bid preference.

(4) Knowingly and intentionally conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of a state agency who exercises any official responsibility for an acquisition.

(5) Conviction of any felony charge of fraud, bribery, collusion, conspiracy, federal or state antitrust laws, or other criminal offense in connection with the bidding upon, award of, or performance of any contract for goods and services with any state agency.

(6) Violation of state ethic laws.

(7) Failure to comply with terms and conditions of existing contracts.

(e) The commission may debar a vendor for no less than one year and no longer than three years. A proposed debarment may include all known successors-in-interest of a business entity. Each proposed decision to debar a vendor and/or successors-in-interest shall be made on a case-by-case basis after consideration of relevant facts and circumstances. A proposal to debar a vendor shall be delivered in writing, stating the reason therefore. Vendor shall be given 10 working days to respond. Debarment does not relieve the vendor of responsibility for existing contractual obligations with the state. The commission shall establish procedures to ensure due process to vendors in the debarment process.

(1) Vendors subject to a proposed debarment may submit a written appeal to the Director, Central Procurement Services within 10 days following notification of the proposed debarred status.

(2) No person who has a direct interest in the outcome of the appeal may communicate directly or indirectly upon the merits of debarment with any commission employees without notice and approval of the Director, Central Procurement Services.

(f) The commission and state agencies shall ensure that debarred vendors do not participate in state contracting. Any exclusion from state contracting due to debarment shall extend to all state contracting and subcontracting within the supervision of state agencies.

(g) State agencies shall report a vendor's performance on any purchases of \$25,000 or more from contracts administered by the commission and other purchases made through an agency's delegated authority in accordance with the policy guidance contained in the Commission's Procurement Manual. Agencies may report a vendor's performance on delegated purchases costing less than \$25,000.

(h) The commission may consider other debarment activities from other entities as possible indicators of vendor responsibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Judy Ponder

General Counsel

General Services Commission

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For further information, please call: (512) 463-3960

Buying Under Contract Established By An Agency Other Than the General Services Commission

1 TAC §113.125

The new section is proposed under the Texas Government Code, Title 10, Subtitle D, §2152.003 that was enacted by S. B. 1752, Acts of the 75th Legislature, R.S. (1997).

The following statute is affected by the new section: Texas Government Code, Title 10, Subtitle D.

§113.125. Buying Under Contract Established By An Agency Other Than Commission.

(a) A state agency may purchase goods or services under a contract made by another state agency other than the commission by complying with this rule.

(b) Before making a particular purchase, the requesting state agency must notify the commission in writing that the purchase is being considered. The agency must state in the request why it is advantageous for the Commission to allow other agencies to purchase goods or services from another state agency other than the commission. The notification must be signed by the chief purchasing officer for the agency.

(c) If the commission determines that a lower price is available through the commission or the goods or services are already available through a contract administered by the commission, it will so inform the requesting agency after receipt of the notification. Upon receipt of information that a lower price is not available, the agency shall utilize established purchasing procedures for the procurement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Judy Ponder

General Counsel

General Services Commission

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For further information, please call: (512) 463-3960

Chapter 126. Surplus and Salvage Property Programs [Intergovernmental Programs Division]

State Surplus and Salvage Property

1 TAC §§126.1-126.4

The General Services Commission proposes amendments to §§126.1-126.4, concerning the State Surplus and Salvage Property Program. The proposed amendments will change the

chapter heading for 1 TAC, Chapter 126 from the Intergovernmental Programs Division to the Surplus and Salvage Property Programs. The proposed amendments to §§126.1–126.4 under the State Surplus and Salvage Property Program will allow for the implementation of Senate Bill 833, 75th Legislature, which expedites the process for disposing of surplus and salvage property.

Mr. Dan Bremer, Program Administrator, Surplus and Salvage Property Programs, has determined that for the first five years the rules are in effect the net impact for state government should be a reduction of storage and advertising costs currently borne by state agencies in disposing of surplus property.

Mr. Dan Bremer has also determined that for each year of the first five years the rules are in effect, the public will not be impacted as a result of enforcing these rules. There will be no cost to small or large businesses and/or persons who are required to comply with the sections as proposed.

Comments on the proposals may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal to the *Texas Register*.

The amendments are proposed under Texas Government Code, Title 10, Subtitle D, Chapter 2175, which provides the General Services Commission with authority to promulgate rules consistent with the Code.

The following statute is affected by these rules: Texas Government Code, Title 10, Subtitle D, Chapter 2175.

§126.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

State agency—Any department, commission, board, office or other agency as defined in **Texas Government Code, Title 10, Subtitle D, §2151.002** [Texas Civil Statutes, Article 601b, Article 1, §1.02], but excluding those agencies described in **§2175.301 and §2175.302** [Article 9, §9.14]. For purposes of acquiring property under these rules, the term "state agency" shall additionally include the Texas Civil Air Patrol.

§126.2. Disposition of Surplus and Salvage Property to State Agencies, Political Subdivisions and Assistance Organizations.

(a) (No change.)

(b) Dissemination of Information. A **monthly** listing of currently available surplus or salvage property shall be **made available electronically** [disseminated monthly to state agencies and to those political subdivisions and assistance organizations which have requested this information]. The commission will additionally maintain a mailing list, renewable annually, of political subdivisions and assistance organizations **who have requested a printed copy of the monthly surplus and salvage property listing**. The commission may charge an amount which shall not exceed the actual costs incurred by the commission in maintaining the mail list and in producing and mailing the information on surplus and salvage property.

(c) Offering surplus or salvage property to state agencies, political subdivisions and assistance organizations.

(1) For the first **30** [35] days following dissemination of the monthly surplus listing, the notifying or reporting agency shall establish a price, if any. The first state agency, political subdivision or assistance organization that agrees to the established price before the expiration of **30** [35] days shall be entitled to the property; provided, however, first priority shall be given to a state agency in the event that a competing equivalent request is received from a political subdivision or assistance organization. Two or more requests shall be considered "competing and equivalent" for purposes of this rule if each meets the price established by the notifying or reporting state agency on the same business day within the **30** [35] day period following dissemination of the monthly surplus listing.

(2) (No change.)

(3) If a transfer or acquisition of the property is not arranged within **30** [35] days after the dissemination of the surplus list as provided in subsection (b) of this section, the commission shall dispose of the surplus or salvage to the public in accordance with §126.3 of this title (relating to Disposition of Surplus and Salvage Property to the Public).

§126.3. Disposition of Surplus and Salvage Property to the Public.

(a) (No change.)

(b) Mailing list of bidders. The commission will maintain a mailing list of companies or individuals who have applied to bid on surplus or salvage property. The commission **may** [shall] charge an annual subscription fee to recover the costs associated with maintaining and using the bidders list. Names may be deleted from the mailing list for: failure to bid, failure to make payment, failure to remove awarded items, or failure to renew the annual subscription fee. A bidder who has been removed from the bidders list for failure to pay for or remove surplus property may not be reinstated until a written request has been presented to and approved by the **Program Administrator of the Surplus Property Programs** [Director of the Intergovernmental Programs Division].

(c) (No change.)

(d) Sealed bids. Sealed bids will be handled in accordance with §113.5 of this title (relating to Bid Submission, Bid Opening, and Tabulation).

(1) If the value of any property or lot of property, either surplus or salvage, is estimated to be worth **more than \$5,000** [over \$1,000] of resale value, the sale shall be advertised at least one time in at least one newspaper of general circulation in the vicinity **in which** [where] the property is located.

(2) (No change.)

(3) The commission will notify the successful bidder or bidders, on a sealed bid sale of surplus or salvage property, that an award has been made to them and specify a period of time for payment. In the event that a successful bidder fails to make payment within the specified time, the commission may retain the bid deposit and consider it forfeited. **Furthermore the bidder forfeits his rights to the property and ownership of the property remains with the state.**

(4) When a successful bidder has paid the full amount due for the purchase of surplus or salvage property obtained through a sealed bid sale, the commission shall notify both the successful bidder and the agency holding the title of the surplus or salvage and authorize the transfer of possession. In the case of vehicles or other

items which require title transfer, it shall be the responsibility of the agency holding title to complete the transfer of title to the successful bidder. **In the event a bidder pays for the property but fails to remove the property within the time specified, the bidder forfeits his rights to the property and ownership of the property reverts to the state.**

(e) Auctions. Surplus or salvage sold through the auction method shall be accompanied by an auctioneer's paid receipt. The auctioneer's paid receipt will serve as the authorization of the commission that the purchaser has in good faith complied with the conditions of the sale. In the case of vehicles or other items carrying titles, the agency holding the original title shall be responsible for the transfer to the successful bidder. **In the event that a successful bidder fails to make payment within the specified time, the bidder forfeits his rights to the property and ownership of the property remains with the state. In the event a bidder pays for the property but fails to remove the property within the time specified, the bidder forfeits his rights to the property and ownership of the property reverts to the state.**

(f) - (j) (No change.)

§126.4. Proceeds.

The proceeds from the sale of any surplus or salvage property, less the cost of advertising the sale, the cost, if any, of auctioneer services, and the amount of the fee collected under §126.3(c) of this title (relating to [Sale and] Disposition of Surplus and Salvage Property **to the Public**), shall be deposited to the credit of the item of appropriation to the agency for which the sale was made. The portion of the proceeds from the sale of any surplus or salvage property equal to the costs of advertising the sale and the costs of auctioneer services, if any, shall be deposited **with the Comptroller of Public Accounts** [in the State Treasury] to the credit of the item of appropriation to the Commission from which such costs were expended. The fee collected under §126.3(c) of this title shall be deposited **with the Comptroller of Public Accounts** [in the State Treasury] to the credit of the general revenue fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Judy Ponder

General Counsel

General Services Commission

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For further information, please call: (512) 463-3960

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

16 TAC §3.46

The Railroad Commission of Texas (commission) proposes to amend §3.46, relating to fluid injection into productive reservoirs, to provide for issuance of area permits.

The commission proposes to amend §3.46(d)(2) to delete a reference to disposal wells that was inadvertently included when amendments to §3.46 were adopted last year.

The commission also proposes to add a new subsection (o) to §3.46 that provides for issuance of area permits. Once an area permit is issued, individual injection wells within the area covered by the area permit would be permitted under streamlined requirements.

The application for an area permit, discussed in subsection (o)(1), must include information on wells located within the permit area that may be converted to injection as well as information regarding new injection wells that the applicant intends, as of the date of application for the area permit, to drill within the permit area.

The area-of-review requirements for an area permit application are expanded in subsection (o)(1)(I) to include the permit area and the area 1/4 mile beyond the outer boundary of the permit area. Similarly, notice requirements for an application for an area permit parallel notice requirements for an application for an individual well permit not covered by an area permit, except that they are expanded to cover the entire permit area.

When application is made for an individual well permit under an area permit, as discussed in subsection (o)(4), the applicant must provide specific completion and updated area-of-review information for that well, in addition to paying the \$100.00 injection well permit application fee.

Upon receipt of an application for an individual well permit covered by an area permit, the commission or its delegate may permit the well in writing or, if no objection is made by the commission or its delegate within 20 days of receipt of the individual well permit application, the application will be deemed issued.

Rita Percival, planner, Oil and Gas Division, has determined that for the first five-year period the amendments to §3.46 are in effect, there will be fiscal implications as a result of enforcing or administering the amendments. The effect on state government for the first five-year period the amendments to §3.46 will be in effect is an estimated savings due to decreased time in reviewing applications for multiple injection wells within a permit area in one complete package rather than on an individual well basis. The precise amount of savings cannot be determined as the number of area permit applications that will be submitted, and the magnitude of each such application, is unknown.

Terri Eaton, assistant director, Office of General Counsel, has determined that for each year of the first five years the amendments to §3.46 are in effect, the public benefit will be streamlined permit processing for multiple-well injection projects.

There is no anticipated cost to the affected oil and gas operators associated with the proposed area permit provisions of §3.46. Operators have the option, but are not required, to submit area permit applications. Those operators who choose to submit area permit applications will do so only if they believe that

the benefits of obtaining an area permit outweigh the burdens associated with obtaining injection well permits on a well-by-well basis.

Ms. Percival has determined that the cost of compliance for small businesses as a result of enforcing or administering the proposed amendments to §3.46 will be comparable to the costs incurred by oil and gas operators, *i.e.*, there will be no costs of compliance for small businesses as a result of enforcing or administering the proposed amendments.

Public comment on the proposed amendments to §3.46 may be submitted to Richard Ginn, Deputy Assistant Director, Environmental Services, Oil and Gas Division, P. O. Box 12967, Austin, Texas 78711-2967, no later than 5:00 p.m. on the 13th day after publication of the proposed amendments in the *Texas Register*. For additional information, call Terri Eaton at (512) 463-6977.

The amendment is proposed under Texas Water Code, Chapter 27, which authorizes the commission to adopt and enforce rules relating to injection wells and Texas Natural Resources Code: §81.052, which authorizes the commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the commission under §81.051; §85.042(b), which authorizes the commission to adopt and enforce rules for the prevention of actual waste of oil or operations in the field dangerous to life or property; §85.201, which authorizes the commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; §85.202, which authorizes the commission to adopt rules to prevent waste of oil and gas in producing operations and to require wells to be operated in a manner that will prevent injury to adjoining property; and §91.101, which authorizes the commission to adopt rules relating to the production of oil and gas wells and the handling of any material associated with any operation or activity regulated by the commission.

The Texas Water Code, Chapter 27; Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, and 91.101 are affected by the proposed amendment.

§3.46. Fluid Injection into Productive Reservoirs.

(a)-(c) (No change.)

(d) Subsequent commission action.

(1) (No change.)

(2) **An injection** [A disposal] well permit may be transferred from one operator to another operator provided that the commission's delegate does not notify the present permit holder of an objection to the transfer prior to the date the lease is transferred on commission records.

(e)-(n) (No change.)

(o) **Area Permits.** A person may apply for an area permit that authorizes injection into new or converted wells located within the area specified in the area permit. For purposes of this subsection, the term "permit area" shall mean the area covered or proposed to be covered by an area permit. Except as specifically provided in this subsection, the provisions of subsections (a) through (n) of this section shall apply in the case of an area permit and all injection wells converted, completed, operated, or maintained in accordance with that permit. Except

as otherwise specified in the area permit, once an area permit has been issued, the operator may apply to operate individual wells within the permit area as injection wells as specified in paragraph (3) of this subsection.

(1) An application for an area permit must be accompanied by an application for at least one injection well. The applicant must:

(A) identify the maximum number of injection wells that will be operated within the permit area;

(B) identify the depth(s) of usable-quality water within the permit area, as determined by the Texas Natural Resource Conservation Commission;

(C) for each existing well in the permit area that may be converted to injection under the area permit, provide a wellbore diagram that specifies the casing and liner sizes and depths, packer setting depth, types and volumes of cement, and the cement tops for the well. A single wellbore diagram may be submitted for multiple wells that have the same configuration, provided that each well with that type of configuration is identified on the wellbore diagram and the diagram identifies the deepest cement top for each string of casing among all the wells covered by that diagram;

(D) provide a wellbore diagram(s) showing the type(s) of completion(s) that will be used for injection wells drilled after the date the application for the area permit is filed, including casing and liner sizes and depths and a statement indicating that such wells will be cemented in accordance with the cementing requirements of Rule 13 of this chapter (16 TAC §3.13, relating to casing, cementing, drilling, and completion requirements);

(E) identify the type or types of fluids that are proposed to be injected into any well within the permit area;

(F) identify the depths from top to bottom of the injection interval throughout the permit area;

(G) specify the maximum surface injection pressure for any well in the permit area covered by the area permit;

(H) specify the maximum amount of fluid that will be injected daily into any individual well within the permit area as well as the maximum cumulative amount of fluid that will be injected daily in the permit area;

(I) in lieu of the area-of-review required under subsection (e) of this section and subject to the area-of-review variance provisions of subsection (e) of this section, review the data of public record for wells that penetrate the proposed injection interval within the permit area and the area 1/4 mile beyond the outer boundary of the permit area to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the injection interval into freshwater strata. The applicant shall identify in the application the wells which appear from the review of such public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has knowledge. The applicant shall also identify in the application the date of plugging of each abandoned well within the permit area and the area 1/4 mile beyond the outer boundary of the permit area; and

(J) furnish a map showing the location of each existing well that may be converted to injection under the area permit and the location of each well that the operator intends, at the time of application, to drill within the permit area for use for injection. The map shall be keyed to identify the configuration of all such wells as described in subparagraphs (C) and (D) of this paragraph.

(2) In lieu of the notice required under subsection (c)(1) of this section, notice of an area permit shall be given by providing a copy of the area permit application to each surface owner within the permit area; each adjoining offset operator; the county clerk of each county in which all or part of the permit area is located; and the city clerk or other appropriate city official of any incorporated city which is located wholly or partially within the permit area, on or before the date the application is mailed to or filed with the commission. Notice of an application for an area permit shall also be given in accordance with the requirements of subsection (c)(2). If, in connection with a particular application, the commission or its delegate determines that another class of persons, such as adjacent surface owners or an appropriate underground water conservation district, should receive notice of the application, the commission or its delegate may require the applicant to mail or deliver a copy of the application to members of that class.

(3) Once an area permit has been issued and except as otherwise provided in the permit, no notice shall be required when an application for an individual injection well permit for any well covered by the area permit is filed.

(4) Prior to commencement of injection operations in any well within the permit area, the operator shall file an application for an individual well permit with the commission in Austin. The individual well permit application shall include the following:

(A) the well identification and, for a new well, a location plat;

(B) the location of any well drilled within 1/4 mile of the injection well after the date of application for the area permit and the status of any well located within 1/4 mile of the injection well that has been abandoned since the date the area permit was issued, including the plugging date if such well has been plugged;

(C) a description of the well configuration, including casing and liner sizes and setting depths, the type and amount of cement used to cement each casing string, depth of cement tops, and tubing and packer setting depths;

(D) an application fee in the amount of \$100.00 per well; and

(E) any other information required by the area permit.

(5) An individual well permit may be issued by the commission or its delegate in writing or, if no objection to the application is made by the commission or its delegate within 20 days of receipt of the application, the individual well permit shall be deemed issued.

(6) All individual injection wells covered by an area permit must be permitted in accordance with the requirements

of this subsection and converted or completed, operated, maintained, and plugged in accordance with the requirements of this section and the area permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712742

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-7008

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Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter A. Organization of the Commission

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Racing Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

16 TAC §303.2

The Texas Racing Commission proposes the repeal of §303.2, concerning the Commission sections. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission's separate horse and greyhound sections were eliminated. This repeal is necessary for the Commission's rules to be consistent with applicable state law.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules are consistent with Texas Civil Statutes, Article 179e, §2.02. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §2.02, which specifies the make-up of the Commission.

The proposed repeal implements Texas Civil Statutes, Article 179e.

§303.2. Commission Sections.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712781

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699



16 TAC §303.2

The Texas Racing Commission proposes new §303.2, concerning Commission responsibilities. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is required by rule to clearly separate the policymaking responsibilities of the Commission and the management responsibilities of the executive secretary, the chief executive officer of the agency. This section sets out the policymaking responsibilities of the Commission.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the proposal will be that the legislative mandate in Texas Civil Statutes, Article 179e, §2.21 will be implemented and the public will have notice of the specific policymaking responsibilities of the Commission. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The new section is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §2.21, which requires the Commission to adopt rules separating the policymaking responsibilities of the Commission from the management responsibilities of the executive secretary and staff.

The proposed new section implements Texas Civil Statutes, Article 179e.

§303.2. Commission Responsibilities.

(a) The commission shall formulate policy objectives for the agency and supervise the executive secretary. The commission may

approve actions of the executive secretary on its own motion or on request of the executive secretary.

(b) The commission shall propose, adopt, amend, and repeal rules as authorized or required by law, including under the Act and under Chapter 2001, Government Code.

(c) The commission shall approve all operating plans required to be filed by law which are prospective in nature, such as legislative appropriation requests and the biennial strategic plan.

(d) The commission shall issue all racetrack licenses and licenses to conduct race meetings.

(e) The commission shall issue final orders and assess administrative penalties as authorized by law.

(f) The commission may delegate any power or duty to a committee of its members or to the agency's executive secretary. The chair may establish a committee and appoint committee members in an open meeting. The chair may appoint committee members who are not members of the commission, but a committee of such members will be advisory only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712782

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699



16 TAC §303.7

The Texas Racing Commission proposes an amendment to §303.7, concerning Commission employees. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the provisions relating to conflicts of interest for Commission employees were modified. This amendment brings the Commission rule regarding grounds for disqualification as a Commission employee into compliance with the new state law.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules are consistent with applicable state law and that the Commission's employees and potential employees will have ample notice of possible disqualifications. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for

the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §2.12, which specifies the employment disqualifications applicable to Commission employees.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.7. *Employees.*

(a) (No change.)

(b) The commission and the executive secretary may not employ or continue to employ a person:

(1) who owns **or controls** a financial interest in a **licensee of the commission** [an association];

(2) who **is employed by or serves as a paid consultant to a licensee of the commission, an official breed registry, or a Texas trade association, as defined by the Act, §2.07(c), in the field of horse or greyhound racing or breeding** [accepts remuneration from an association];

(3) who **owns or leases a race animal that participates in pari-mutuel racing** [is an owner, lessor, or lessee of a greyhound or a horse that is entered in a race] in this state; or

(4) who accepts or is entitled to a part of the purse or **Texas-bred incentive award** [purse supplement] to be paid on a greyhound or a horse in a race held in this state.

(c) The commission and the executive secretary may not employ or continue to employ a person **who is residentially domiciled with or** related within the **first** [second] degree by affinity or [the third degree by] consanguinity to a person who is ineligible for employment under subsection (b) of this section.

(d) (No change.)

[(e) The commission shall develop and publish a personnel handbook which complies with applicable state and federal laws.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712783

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699

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16 TAC §303.8

The Texas Racing Commission proposes an amendment to §303.8, concerning the executive secretary. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is required by rule to clearly separate the policymaking responsibilities of the Commission and the management responsibilities of the

executive secretary. This section sets out the management responsibilities of the executive secretary, the chief executive officer of the agency.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the legislative mandate in Texas Civil Statutes, Article 179e, §2.21 will be implemented and the public will have notice of the specific management responsibilities of the executive secretary. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §2.21, which requires the Commission to adopt rules separating the policymaking responsibilities of the Commission from the management responsibilities of the executive secretary and staff.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.8. *Executive Secretary.*

(a) The executive secretary serves at the pleasure of the commission on a full-time basis and may not hold other employment. **The executive secretary shall administer the programs of the agency and has all powers necessary for such administration, as well as any specific duties assigned or functions delegated by the commission.**

(b) The executive secretary shall maintain the records of the commission **and ensure the agency's compliance with the open records and records retention laws** [and shall perform other duties as required by the commission].

(c) **The executive secretary shall establish the organizational structure of the agency's employees, including the establishment of various divisions within the agency. The executive secretary shall prescribe the duties and compensation for all other commission employees, subject to the commission's approval of the budget. The executive secretary shall adopt personnel policies and other internal operating policies and procedures.**

(d) The executive secretary shall prepare and file all agency reports required by law that are retrospective in nature, such as the annual financial report and periodic reports on measures.

(e) The executive secretary shall enforce the Act, the rules, and the orders of the commission, including determining

the method of enforcement, the amount of penalties, and the issuance of preliminary reports for administrative penalties.

(f) The executive secretary shall issue occupational licenses and training facility licenses in accordance with the criteria established in the Act and the rules. The executive secretary shall review all applications for racetrack licenses and licenses to conduct race meetings and make a recommendation to the commission regarding the issuance of such licenses.

(g)[(c)] Except as otherwise provided by a rule of the commission, if [a rule of] the commission places a duty on the executive secretary, **by rule or otherwise**, the executive secretary may delegate that duty to another employee of the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712784

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699



Subchapter B. Powers and Duties of the Commission

16 TAC §303.42

The Texas Racing Commission proposes an amendment to §303.42, concerning charity race days. The amendment clarifies the type of revenue that a licensed racetrack is to use in determining the amount to be paid to a charity for a charity race day.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules are clear and unambiguous and that charities designated for charity race days will receive the benefit of all wagering conducted at a licensed racetrack facility on that race day. There will be fiscal implications for licensed racetracks. Under Texas Civil Statutes, Article 179e, §§8.02 and 10.01, each licensed pari-mutuel racetrack is required to conduct charity race days. There has been some inconsistency among the licensed pari-mutuel racetracks as to which wagering revenue is to be considered when determining the amount to be paid to the designated charity for the race day. Under the amendment, each racetrack will be required to consider all wagering conducted at its facility on that charity race day, both on live races and simulcast races, when determining the amount of money to be paid to the designated charity. This may have the effect of increasing the amount of revenue paid to the charity and reducing the amount of revenue retained

by the racetrack, depending on how the racetrack interpreted the rule in the past. The exact economic impact cannot be determined, however, because the amounts of revenue retained by the racetrack and paid to the charity depend entirely on the total amount wagered at the racetrack on that charity race day. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §8.02 and §10.01, which require licensed pari-mutuel racetracks to conduct charity race days and which authorize the Commission to adopt rules relating to the conduct of charity race days.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.42. *Approval of Charity Race Days.*

(a)-(b) (No change.)

(c) An association shall pay to the charity at least 2.0% of the total pari-mutuel handle generated **at the association's racetrack on live races and imported simulcast races** on the charity race day.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712785

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699



Subchapter D. Texas Bred Incentive Programs

Programs for Greyhounds

16 TAC §303.101

The Texas Racing Commission proposes an amendment to §303.101, concerning the greyhound breed registry. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is required by rule to require the award of a grant to a person for the rehabilitation of greyhounds or to locate homes for greyhounds. The amendment implements that legislation by establishing the grant program and providing procedures for the awarding and reporting of the grants.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the legislative mandate in Texas Civil Statutes, Article 179e, §6.09(f) will be implemented and pari-mutuel racing will be humane for the racing animals. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, or horse training industries. The proposal will enhance the state's greyhound breeding and greyhound training industries by improving the industries' public image regarding the humane treatment, care, and rehabilitation of greyhounds who have completed their racing careers.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.09(f), which requires the Commission to adopt rules requiring the award of grants for the rehabilitation and relocation of retired greyhounds.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.101. Greyhound Breed Registry.

(a) **Designation.** The Texas Greyhound Association is the official breed registry for greyhounds.

(b) **Grant Program.**

(1) **Each calendar year, the Texas Greyhound Association shall use 2.0% of the funds it receives under the Act, §6.09(d) for a grant program.**

(2) **The grants must be awarded to an organization that is an exempt organization for purposes of federal income tax and that conducts programs for the rehabilitation or adoption of greyhounds who have completed their racing careers.**

(3) **The Texas Greyhound Association shall adopt criteria and procedures for the awarding of the grants. The criteria and procedures are subject to the approval of the executive secretary.**

(4) **Not later than March 1 of each year, the Texas Greyhound Association shall file with the commission a written report detailing the grants awarded under this subsection during the preceding calendar year. The Texas Greyhound Association shall appear before the commission at the request of the commission to report on its activities under this subsection.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712786

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699

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Chapter 305. Licenses for Pari-mutuel Racing

Subchapter A. General Provisions

16 TAC §305.5

The Texas Racing Commission proposes an amendment to §305.5, concerning fingerprints. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is authorized to waive the general fingerprinting requirement for all licensees. The amendment establishes the criteria the Commission will use in determining which license applicants will not be required to submit fingerprints.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. There will be fiscal implications for state government as a result of enforcing the proposal. The Commission pays the Department of Public Safety for all fingerprints submitted for processing, at a cost of \$15 each. Under the proposal, the total number of fingerprint cards submitted for processing will decrease. The Commission estimates that approximately 800 applicants each year will be eligible for the fingerprint waiver. This would result in a decrease in the amount of money paid by the Commission to the Department of Public Safety of approximately \$12,000. However, because the price paid by the Commission is directly related to the costs incurred by the Department of Public Safety, the net fiscal impact of the proposal should be zero.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the legislative initiative in Texas Civil Statutes, Article 179e, §7.10 will be implemented and the licensing process for certain participants in pari-mutuel racing will be less burdensome without sacrificing the integrity of the Commission's regulatory responsibilities. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §7.10, which authorizes the Commission to waive the fingerprinting requirements for any license applicant.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§305.5. *Fingerprints.*

(a) **Except as otherwise provided by this section, an [An]** applicant for a license must submit a complete set of the applicant's fingerprints with the application documents. If the applicant is not an individual, the applicant must submit a complete set of fingerprints for each individual who:

(1) serves as a director, officer, or partner of the applicant;

(2) holds a beneficial ownership interest in the applicant of 5.0% or more; or

(3) owns any interest in the applicant, if requested by the Department of Public Safety.

(b)-(f) (No change.)

(g) **Waiver.**

(1) Pursuant to Texas Civil Statutes, Article 179e, §7.10, the commission will waive the fingerprint requirements in this section for an applicant for a license as a race animal owner or trainer if:

(A) the individual presents proof of a valid owner or trainer license issued in a racing jurisdiction that requires the submission of fingerprints to the Federal Bureau of Investigation and the commission verifies that fingerprints were submitted by that jurisdiction for the applicant within the five years preceding the date of the application in Texas;

(B) the applicant's permanent residence is outside the State of Texas.

(2) This subsection does not apply to an applicant who:

(A) has a criminal history in another state, as revealed by a report by the Federal Bureau of Investigation or other reliable criminal information sources;

(B) maintains a residence or is employed, whether self-employed or otherwise, in Texas; or

(C) obtains a license badge issued by the commission which gives the applicant access to a restricted area on association grounds.

(3) Notwithstanding a waiver of the fingerprint requirements under this subsection, the commission reserves the right, at its sole discretion, to require the submission of fingerprints after a license has been issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712787

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699

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16 TAC §305.7

The Texas Racing Commission proposes an amendment to §305.7 concerning the duration of pari-mutuel licenses. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is authorized to develop a system through which occupational licenses expire at different times of the year. The amendment changes the expiration of occupational licenses from December 31 of each year to a 12-month revolving system.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. There will be fiscal implications for state government as a result of enforcing the proposal. The proposal will stagger the expiration dates of occupational licenses, which will more evenly distribute the workload of the occupational licensing division of the agency. The agency anticipates that because of this shift of workload, costs of occupational licensing personnel will eventually decrease. The exact amount of the decrease cannot be determined at this time, however, because it will depend on the number of applications received at various times of the calendar year.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be the legislative initiative in Texas Civil Statutes, Article 179e, §7.07 will be implemented and the licensing process for agency staff and for participants in pari-mutuel racing will be less burdensome, costly, and time-consuming. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §7.07, which authorizes the Commission to adopt a system under which licenses expire on various dates during the year.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§305.7. *Duration of License.*

(a) A racetrack license is perpetual.

(b) An **occupational or training facility** [individual] license is **valid for one year and expires on the last day of the month** [expires on December 31 of the year] in which the license was issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712788

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699



Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Facilities and Equipment

16 TAC §309.32

The Texas Racing Commission proposes an amendment to §309.32, concerning automatic banking machines. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is authorized to adopt rules permitting the placement of automatic banking machines at pari-mutuel racetracks. The amendment eliminates the former prohibition against automatic banking machines and establishes a licensing process for vendors of the machines and accounting and auditing requirements for the deposit of the fee authorized by the legislation.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. There will be fiscal implications for state government as a result of enforcing the proposal. In accordance with the legislation, the proposal requires the withdrawal of an additional \$1.00 fee for each transaction to be deposited in the state treasury. Therefore, the placement of automatic banking machines at pari-mutuel racetracks will generate revenue for the state. The exact amount of revenue generated from this source cannot be determined, however, because it will depend on the number of transactions occurring at the machines at racetracks. If 10% of the patrons use the automatic banking machines, the Commission estimates approximately \$356,746 will be generated for the state each year from the automatic banking machines.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the legislative initiative in Texas Civil Statutes, Article 179e, §11.04 will be implemented and patrons at pari-mutuel racetracks will have the convenience of automatic banking machines. There will be fiscal implications for small businesses. The vendors of automatic banking machines and the pari-mutuel racetracks placing the machines are expected to charge fees to customers using the machines. The exact amount of the revenue generated for the vendors and racetracks cannot be determined at this time, however, because it will depend on the number of transactions processed at the machines and the amount of the fee-per-transaction set by the vendor and the racetrack. An individual using an automatic banking machine at a pari-mutuel racetrack to withdraw money will be required to

pay a \$1 fee to the state in addition to any other fees charged by the vendor, racetrack, and the individual's financial institution. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §11.04, which authorizes the Commission to adopt rules permitting the placement of automatic banking machines on the grounds of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.32. Automatic Banking Machines.

(a) **Machines Permitted.** An association may [not] permit the placement of an automatic banking machine on association grounds **only in accordance with this section.** For purposes of this section, "automatic banking machine" means an electronic terminal, as that term is defined by Regulation E, Electronic Fund Transfers, 12 CFR 205.

(b) Vendor.

(1) If an association contracts with a vendor to provide an automatic banking machine, the contract is subject to inspection by the commission. The contract may not contain any provision that violates or is inconsistent with the Texas Racing Act or these rules. The association shall make the contract available to the commission on request.

(2) A vendor of automatic banking machines for pari-mutuel racetracks must be licensed by the commission. If the vendor is not an individual, the chief executive officer and the chief operating officer of the vendor must be licensed.

(c) **Configuration.** An automatic banking machine placed on association grounds must be configured with the following restrictions:

(1) A customer using the machine may withdraw funds only from his or her checking account at a bank or other financial institution. A customer may not use the machine to withdraw funds from a savings account.

(2) A customer may withdraw no more than \$200 per day per account. For purposes of this paragraph, a "day" is the 24-hour period beginning at 12:00 midnight.

(3) For each transaction at a machine, a statutory fee of \$1.00 must be withdrawn from the customer's account in addition to the amount delivered to the customer and any other fees authorized and imposed by the bank or other financial institution, by the association, or by the vendor.

(4) Before the customer authorizes the transaction, the machine must display a screen that notifies the customer of the statutory fee and permits the customer to cancel the transaction. The notice must state the following or its equivalent: UNDER TEXAS RACING ACT, §11.04(e), A \$1 FEE MUST BE COL-

**LECTED ON EACH TRANSACTION AT THIS MACHINE
FOR DEPOSIT INTO THE TEXAS STATE TREASURY.**

(d) Collection and Payment of Fee.

(1) The association or vendor, if applicable, shall collect the statutory fee periodically and pay the total amount of the statutory fees collected during the preceding month to the commission not later than the 5th business day of the month. Payment of the statutory fee must be made in accordance with procedures established by the executive secretary.

(2) Failure to collect and pay the proper amounts for the statutory fee may result in disciplinary action against the association or vendor.

(e) Records and Audit.

(1) The association or vendor, if applicable, shall maintain complete records regarding all transactions conducted at each machine placed by the association or vendor on association grounds. The records must be maintained for at least three years after the date of the transaction.

(2) The commission may audit the records at any time to ensure the proper collection and payment of the statutory fees.

(f) **Compliance with Other Laws.** A machine placed on association grounds under this section must comply with all other applicable state and federal statutes and regulations. This section may not be construed to supersede any other state or federal statutes or regulations applicable to automatic banking machines.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712789

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699



Chapter 313. Officials and Rules of Horse Racing

Subchapter D. Running of the Race

Jockeys

16 TAC §313.408

The Texas Racing Commission proposes an amendment to §313.408, concerning jockey agents. The amendment clarifies the requirements relating to the use of jockey agents during quarter horse race meetings.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit

anticipated as a result of enforcing the proposal will be that jockey agents at quarter horse meets will be able to represent the same number of riders as at thoroughbred or mixed meets. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§313.408. *Jockey Agents.*

(a) **During a thoroughbred or mixed race meeting, a jockey agent may represent only two jockeys and one apprentice jockey at any given time. During a quarter horse race meeting, a jockey agent may represent only three jockeys at any given time.** [At a given time, a jockey agent may represent not more than two jockeys and one apprentice jockey.] A jockey agent shall maintain a record of all engagements for each jockey **and apprentice jockey** the agent represents and make the records available for examination by the stewards at any time. The record must specify first or second calls for each race.

(b)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-9712790

Paula C. Flowerday

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



Chapter 319. Veterinary Practices and Drug Testing

Subchapter A. General Provisions

16 TAC §319.10

The Texas Racing Commission proposes an amendment to §319.10, concerning prohibited substances and devices. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission's authority was clarified and restated with respect to prohibiting the possession of certain devices and substances at pari-mutuel

racetracks. The amendment clarifies the types of substances and devices, such as hypodermic syringes, which are prohibited at a pari-mutuel racetrack and limits the prohibition for possession of such substances and devices to the restricted and secure areas of pari-mutuel racetracks.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the legislative initiative in Texas Civil Statutes, Article 179e, §3.16 will be implemented and that pari-mutuel racing will be safe and humane for the racing animals and will be of the utmost integrity for the wagering public and the participants in the racing. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, or greyhound breeding industries. The proposal may have an effect on the horse and greyhound training industries in that the proposal limits the types of substances and devices that a trainer may possess in the stable or kennel area of a pari-mutuel racetrack. This amendment, however, clarifies a prohibition that has been in effect for some years and should not necessitate a significant change in training procedure for any licensed trainer.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influence of racing, including rules relating to the use of a prohibited device or prohibited substance at a racetrack.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.10. Devices and Substances Prohibited.

(a) Except as otherwise provided by this section, a person **in a restricted area on association grounds during a live race meeting** may not possess:

(1) **an injectable container of a prohibited drug, chemical, or other substance, as that term is defined by §319.3 of this title (relating to Medication Restricted); or**

(2) a parenteral administration device, such as [on association grounds an injectable substance or] a hypodermic syringe, hypodermic needle, **fluid administration set**, or other device for making [hypodermic] injections **into a race animal**.

(b) A person may make a written request to the commission veterinarian for permission to possess at a horse racetrack a syringe with a non-injectable tip with a capacity of 35cc or more. The syringe must be obtained from a veterinarian licensed by the commission and must be labeled, and the label must be initialed by the commission

veterinarian. The commission veterinarian shall grant permission to possess a syringe under this subsection if the veterinarian determines that the purpose for which the syringe is wanted is consistent with the rules of the commission relating to medication and drug testing. The commission veterinarian shall maintain a record of all requests approved under this subsection.]

[(c) A person may possess at a greyhound racetrack a syringe with a non- injectable tip.]

(b) [(d)] This section does not apply to an individual who has a valid prescription from a physician for an injectable medication for the individual's own use, provided the individual has notified the stewards or racing judges and has received their approval in writing on a form prescribed by the commission.

(c) [(e)] This section does not apply to a veterinarian licensed by the commission **or a veterinary technician acting under the direct supervision of a veterinarian licensed by the commission.**

(d) **For purposes of this section, "restricted area" means:**

(1) **the paddock;**

(2) **the stable or kennel area; and**

(3) **any area on association grounds that may be entered only on display of a valid license badge or other pass issued by the commission or the association.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712791

Paula C. Flowerday

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



Subchapter D. Drug Testing

Testing Procedures

16 TAC §319.336

The Texas Racing Commission proposes an amendment to §319.336, concerning the payment of drug testing costs. The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, pari-mutuel racetracks are authorized to use the revenue from wagering vouchers to pay the costs of drug testing. The amendment implements that change and codifies a procedure by which the uncashed mutual ticket revenue from all pari-mutuel racetracks may be pooled to pay the total cost of drug testing for all pari-mutuel racetracks.

Paula C. Flowerday, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. There will be fiscal implications for state government as a result of enforcing the proposal. Under the Texas Racing Act, a

pari-mutuel racetrack may use revenue from uncashed mutuel tickets to pay the costs of drug testing for race animals. Any revenue remaining after the payment of the drug testing costs is to be paid to the Commission to cover the costs of its operations. By pooling the costs of drug testing, some uncashed ticket revenue from one racetrack may be used to pay excess drug testing costs for another racetrack, thereby reducing the amount of uncashed ticket revenue that will be retained by the Commission. The Commission believes, however, that this reduction will not have a significant negative effect on its revenues or operations.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the legislative initiative in Texas Civil Statutes, Article 179e, §3.07(e) will be implemented and the costs of drug testing for race animals will be equitably borne by all pari-mutuel racetracks in the state. There will be positive fiscal implications for some pari-mutuel racetracks. The racetracks will now be permitted to use cash flow from pari-mutuel vouchers to cover the costs of drug testing, which are an ongoing and constant expense item during live race meetings. Further, racetracks whose uncashed mutuel ticket revenue does not fully cover the costs of drug testing will have those costs covered by uncashed ticket revenue at other racetracks, thereby foregoing the need for the racetrack to use its own revenues to pay those costs. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding or greyhound breeding industries.

Comments on the proposal may be submitted on or before November 1, 1997, to Paula C. Flowerday, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.02(e), which authorizes pari-mutuel racetracks to use revenue from pari-mutuel vouchers to pay drug testing costs; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.336. Payment of Testing Costs.

(a) **Responsibility for Payment.** Immediately on receipt of approved charges for conducting tests under this subchapter, an association shall pay the charges.

(b) **Authority to Use Outstanding Tickets and Pari-mutuel Vouchers.** An association may use **money held by the association to pay** [the proceeds from] outstanding tickets **and outstanding pari-mutuel vouchers** to pay for charges under this section. If the **money held** [proceeds from outstanding tickets] is insufficient to pay the charges, the association shall pay the remainder of the charges.

(c) **Accounting and Payment of Remainder.**

(1) **No later than March 31 of each year, an association shall provide to the commission, on a form prescribed by the**

executive secretary, an accounting of the outstanding tickets and pari-mutuel vouchers held by the association and the drug testing charges paid by the association. At the same time, the association shall pay to the commission the amount of outstanding tickets remaining after the association offsets the costs of drug testing.

(2) **The commission will review the accounting submitted by the association. If the commission determines the account is in error, the commission may adjust the amount of outstanding tickets and either demand payment of the additional amounts owed or reimburse the association for the excess amount paid to the commission.**

(d) **Pooling of Drug Testing Costs.** The executive secretary may establish a procedure to pay drug testing costs by pooling the amounts held by all associations to pay outstanding tickets. If the amount held by an association does not cover the full costs of drug testing for that association, the executive secretary may pay those costs using funds paid to the commission under subsection (c)(1) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712792

Paula C. Flowerday

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 833-6699



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Provision of Anti-Rabies Biologicals

25 TAC §§97.121, 97.123, 97.124, 97.125

The Texas Department of Health (department) proposes a repeal of §97.122, amendments to §§97.121, 97.123, 97.124, and new §97.125, concerning provision of anti-rabies biologicals. Specifically the sections cover the products to be provided, the stocking and issue of biologicals, payment for biologicals, and designation of off-site depots. The list of drugs formerly in §97.122 is summarized as "anti-rabies biologicals" and is included in the amendments and new rule. The amendments to §97.123 and §97.124 clarify that the department will provide anti-rabies biologicals for persons at risk of exposure to rabies, regardless of the person's ability to pay, but that the department is not responsible for providing anti-rabies biologicals to a person who has not had a bona fide exposure to rabies. The amendment to §97.124 specifies payment options for the person obtaining the anti-rabies biologicals. New §97.125 outlines the policies the off-site anti-rabies biologicals depots must adhere to in order to promote consistency throughout the state.

James H. Wright, D.V.M., Director, Zoonosis Control Division, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to local governments. A net financial gain to state government should occur because the department is currently dispensing \$540,000 worth of anti-rabies biologicals annually for which it is not being reimbursed. Improved reimbursement procedures should decrease this loss by at least 10% (conservative estimate).

Dr. Wright has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be that no person who requires the protection of post-exposure rabies prophylaxis will be denied access to the biologicals and that persons throughout the state will have easier access to anti-rabies biologicals through the establishment of depots for storing and dispensing anti-rabies biologicals. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no anticipated impact on local employment.

Comments on the proposal may be submitted to James Wright, D.V.M., Director, Zoonosis Control Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, Telephone (512) 458-7255. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments and new section are proposed under the Health and Safety Code §12.033 which provides for fees for the distribution and administration of certain vaccines and sera; §826.031 which provides for vaccine and hyperimmune serum to be dispensed to persons at risk of being exposed to rabies; §826.011 which requires the Texas Board of Health (board) to adopt rules necessary to effectively administer Chapter 826; and §12.001 requires the board to adopt rules for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The amendments and new section affect Health and Safety Code, Chapter 12 and Chapter 826.

§97.121. Purpose.

The purpose of these sections is to provide anti-rabies biologicals (vaccines and hyper-immune sera) for the use and benefit of persons exposed, or **at risk** [suspected] of exposure, to rabies.

§97.123. Stocking and Issuing.

(a) Stocking. **Anti-rabies biologicals will be procured and distributed by the Texas Department of Health (department). Anti-rabies biologicals may** [Biologicals listed in §97.122 of this title (relating to Products To Be Provided) will] be stocked in depots located throughout the state. The products in each depot will remain under the control of the appropriate regional director of this department until issued.

(b) Issuing.

(1) (No change.)

(2) **The department has the right to refuse to provide anti-rabies biologicals if the incident in question does not warrant rabies post-exposure prophylaxis. The guidelines established by the Advisory Committee on Immunization Practices of the U.S.**

Public Health Service will be used as guidelines for assessing rabies exposure. In event the department elects not to supply biologicals for post-exposure prophylaxis, the department will provide the physician the name of a source from which anti-rabies biologicals may be purchased.

(3)[(2)] The following will be accomplished at time of issue.

(A) A department-prepared human rabies prophylaxis surveillance report will be completed by the person issuing the anti-rabies biologicals [or by the attending physician] and sent to the [Pharmacy Division,] Texas Department of Health. [in Austin.]

(B) An information sheet about rabies and **rabies biologicals** [vaccine] will be provided to the attending physician for informing the patient of the risks and benefits of the anti-rabies treatment.

(C) The most recent edition of the recommendations for treatment for the prevention of rabies published by the Advisory Committee on Immunization Practices of the U.S. Public Health Service will accompany all issues to the physician.

(c) (No change.)

(d) Administration of anti-rabies biologicals. Anti-rabies biologicals issued by the Texas Department of Health may be administered to humans only by or under the supervision of a physician licensed to practice medicine in Texas. Anti-rabies biologicals may be issued at the depot to the bearer of the physician's **order** [prescription] for transport to a [the] physician and subsequent administration to the patient by or under the supervision of a [that] physician.

(e) Return of anti-rabies biologicals. Once issued and removed from the depot storage area, no anti-rabies biologicals may be returned for credit or reimbursement, nor may any returned anti-rabies biologicals be reissued for use of any kind. [This is to ensure that perishable biologicals are not reissued after being improperly stored.]

*§97.124. Payment for Anti-Rabies **Biologicals**.*

The department is specifically authorized by law to distribute anti-rabies biologicals and to receive reimbursement for the cost of the distribution. [The reimbursement procedures are as follows:]

(1) Options for reimbursement will be in accordance with policies set by the Immunizations Division, Texas Department of Health, and are as follows:

(A) [(1)] Payment at time of issue. Arrangements for payment must be complete at the time of issuance of the anti-rabies biologicals, **including options for monthly payments and/or third party coverage, or payment in full at the time of receipt.** The regional director is responsible for ensuring that payment **arrangements are** [is] made. [Payments will be forwarded immediately upon receipt to the director, Fiscal Division, Texas Department of Health. Each payment will be accompanied by a completed Texas Department of Health rabies reimbursement form.]

(B) [(2)] Inability to pay. The regional director **will** [is authorized to] accept, in lieu of payment, a certificate signed by **the patient** [a licensed physician] that the patient is unable to pay in whole or part the cost of the biologicals and has no third party or other alternate source to provide payment.

(2)[(3)] Refusal to pay. The department shall have the right to seek reimbursement in the event of a refusal to pay by a patient, or by his or her third-party coverage or other legally obligated source. A county or district attorney or the Texas attorney general, upon request of a department, may initiate suit or other proceeding in the county of the recipient's residence against the recipient, the parent, guardian, or other person or persons legally responsible for the support of the recipient or against responsible third parties.

§ 97.125. *Designation of Depots for Anti-Rabies Biologicals.*

The department will procure off-site facilities for the storage and dispensing of department-owned anti-rabies biologicals.

(1) These depots will comply with the department's policy regarding storage, dispensing and reporting requirements.

(2) The depots will dispense the vaccine at the price designated by the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712910

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 458-7236

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25 TAC §97.122

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code §12.033 which provides for fees for the distribution and administration of certain vaccines and sera; §826.031 which provides for vaccine and hyperimmune serum to be dispensed to persons at risk of being exposed to rabies; §826.011 which requires the Texas Board of Health (board) to adopt rules necessary to effectively administer Chapter 826; and §12.001 requires the board to adopt rules for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects Health and Safety Code, Chapter 12 and Chapter 826.

§97.122. *Products to Be Provided.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712912

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Subchapter D. Operation Game Thief Fund

31 TAC §55.113

The Operation Game Thief Committee proposes an amendment to §55.113, concerning Reporting Violations; Eligibility of Applicant. The amendment is necessary to modify the current eligibility mechanism for paying rewards to persons who provide information leading to the arrest and conviction of flagrant game-law violators. The amendment will function by allowing persons who provide information to game wardens, as well as those who furnish information directly to Operation Game Thief, to be eligible for Operation Game Thief rewards.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the amendment as proposed is in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the amendment.

Mr. Macdonald also has determined that for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the amendment as proposed will be the enhanced protection of the wildlife resources of the state. There will be no effect on small businesses. There will be no additional economic costs to persons required to comply with the amendment as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the amendment as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendment may be submitted to L.D. Turner, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4626 or 1-800-792-1112.

The amendment is proposed under Parks and Wildlife Code, §12.201, which provides the Operation Game Thief Committee with the authority to adopt rules for the implementation of the Operation Game Thief program.

amendment affects Parks and Wildlife Code, Chapter 12, Subchapter C.

§55.113. *Reporting Violations; Eligibility of Applicant.*

(a) (No change).

(b) A [No] person shall be eligible for receiving a reward if [unless] information required in subsection (a) of this section is forwarded to a designated office established by the department for

the reporting of such information , or to a game warden employed by the department, provided the person seeking eligibility for a reward thereafter forwards the information, as soon as practicable, to the designated office established by the department for the reporting of such information.

(c) (No change).

(d) A person furnishing information required by subsection (a) of this section to a game warden employed by the department, but who does not as soon as is practicable thereafter report the information to the office established by the department for the reporting of such information, may apply in writing to the committee for a reward to be paid from the Operation Game Thief Fund. The request may then be considered in the same manner as other applications for award.

(e) The director shall prescribe the documentation to be furnished to substantiate the information provided.

(f) [(e)] Informants shall have the option of furnishing his name, address and telephone number or requesting only a code number for anonymity which shall be used in lieu of applicant's name in all subsequent transactions with the informant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712838

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 389-4642



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Definition of Terms

37 TAC §141.111

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §141.111, concerning definition of terms. The Board proposes an amendment to §141.111 for the purpose of defining new terms cited in hearings rules proposed in Chapter 146. The section is proposed as part of a new Chapter 146, Revocation of Parole or Mandatory Supervision, in order to implement H.B. 1112, Chapter 429, Acts of the 75th Legislature, Regular Session, 1997 (eff. January 1, 1998).

Victor Rodriguez, Chair of the Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be a streamlining of the hearing process so as to facilitate the transfer of releasees from county jails in a timely manner.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amended rule is proposed under the Code of Criminal Procedure, Article 42.18, §14, which vests the Board with authority to promulgate rules under which releasees are to be heard on revocations of parole and mandatory supervision.

There is no cross-reference to the proposed amended rule.

§141.111 Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

Administrative Violation of Parole or Mandatory Supervision – A violation of parole or mandatory supervision which does not allege criminal conduct.

Criminal Conduct – An act prohibited by law, not including an offense punishable by fine only involving the operation of a motor vehicle.

Hearings section – The hearings section of the Texas Board of Pardons and Paroles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712863

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-1883



Chapter 145. Parole

Revocation of Administrative Release (Parole, Mandatory Supervision, and Executive Clemency)

37 TAC §§145.41–145.47, 145.49–145.53, 145.57

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Pardons and Paroles proposes the repeal of 37 TAC §§145.41–145.47, 145.49–145.53, and 145.57, concerning hearing procedures in the revocation of parole or mandatory supervision. The sections are proposed for repeal to incorporate new and old language under Chapter 146, Revocation of Parole or Mandatory Supervision, in order to implement H.B. 1112, Chapter 429, Acts of the 75th Legislature, Regular Session, 1997 (eff. January 1, 1998).

Victor Rodriguez, Chair of the Board, has determined that for the first five-year period the proposed repeal of these rules is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Rodriguez also has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be a streamlining of the hearing process so as to facilitate the transfer of releasees from county jails in a timely manner. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The repeal of the sections are proposed under the Code of Criminal Procedure, Article 42.18, §14 (a) - (c), which vests the Board with authority to promulgate rules under which releasees are to be heard on parole revocations.

There is no cross-reference to the proposed repealed rules.

§145.41. *Allegation of Violation*

§145.42. *Warrant Issuance*

§145.43. *Notice of allegations; Counsel; Request for Hearings; Waivers*

§145.44. *Procedure after Waiver of Preliminary Hearing*

§145.45. *Procedure after Waiver of Revocation Hearing*

§145.46. *Procedure after Request for Preliminary Hearing; Time; Schedule; Notice; Location; Hearing Officer*

§145.47. *Procedure after Request for Revocation Hearing; Time; Schedule; Notice; Location; Hearing Officer*

§145.49. *Rights of the Administrative Releasee in the Revocation Process*

§145.50. *Administrative Release Preliminary Hearing*

§145.51. *Administrative Release Revocation Hearing*

§145.52. *Review of Administrative Release Revocation Hearing Record; Report and Recommendation of the Hearing Officer*

§145.53. *Final Board Disposition*

§145.57. *Warrant Withdrawal Approved by the Board*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712865

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-1883



Chapter 146. Revocation of Parole or Mandatory Supervision

37 TAC §§146.3–146.10

The Texas Board of Pardons and Paroles proposes new 37 TAC §§146.3- 146.10, concerning hearing procedures on revocation of parole or mandatory supervision. The new sections are proposed as part of a new Chapter 146, Revocation of Parole or Mandatory Supervision, in order to implement H.B. 1112, Chapter 429, Acts of the 75th Legislature, Regular Session, 1997 (eff. January 1, 1998). The purpose of the new sections is to streamline the hearing procedures so as to facilitate the hearing process by working in tandem with the counties, law enforcement, and TDCJ Parole Division.

Victor Rodriguez, Chair of the Board, has determined that for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Rodriguez also has determined that for each year of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be a streamlining of the hearing process so as to facilitate the transfer of releasees from county jails in a timely manner.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the new rules as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal for new rules.

The new rules are proposed under the Code of Criminal Procedure, Article 42.18, §14, which vests the Board with authority to promulgate rules under which releasees are to be heard on revocations of parole and mandatory supervision.

There is no cross-reference to the proposed new rules.

§146.3 *Right to Counsel.*

The director of paroles, hearings, and clemency or the designee of the director of paroles, hearings, and clemency, shall weigh the following factors in determining whether the releasee is to be appointed an attorney:

- (1) whether the releasee is indigent;
- (2) whether the releasee lacks the ability to articulate or present a defense or mitigation evidence in response to the allegations; and
- (3) the complexity of the case and whether the releasee admits the alleged violations.

§146.4. Procedure after Waiver of Preliminary Hearing

(a) Following the waiver of the right to a preliminary hearing, the parole panel or a designee of the board may proceed to a revocation hearing.

(b) The parole panel or designee of the board may accept a waiver of the preliminary hearing provided that a waiver of the preliminary hearing includes the following:

(1) information that releasee was served with the following:

(A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause to believe the releasee has committed a parole violation;

(B) written notice of the allegations of parole violation against the releasee;

(C) notice of the right to full disclosure of the evidence;

(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation of the witness;

(F) notice that the case will be heard by a parole panel or designee of the board;

(G) notice that the releasee has the opportunity to waive in writing the right to either or both the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the board will in all probability revoke; and

(H) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney; and

(2) information which supports the evidence of the alleged rule violations, which may include but are not limited to the following:

(A) a complaint and information or a grand jury indictment;

(B) a judgment and sentence of conviction;

(C) reports of violation;

(D) witness affidavits; or

(E) other evidence if releasee was not indicted by a grand jury or convicted.

§146.5. Procedure after Waiver of Revocation Hearing

(a) Following a review of the waiver of the right to a revocation hearing and receipt of supporting documentation of evidence of the alleged rule violations as described in §146.4 of this title relating to (Procedure after Waiver of Preliminary Hearing), the parole panel may make final disposition of the case by taking one of the following actions:

(1) continue the parole or mandatory supervision, in any manner warranted by the evidence;

(2) revoke the parole or mandatory supervision in any manner warranted by the evidence, provided that the parole panel finds that a preponderance of evidence exists that a condition of parole or mandatory supervision was violated; or

(3) refer the case for further action.

(b) If final board disposition is an order to revoke the parole or mandatory supervision, the releasee or attorney shall be notified in writing of the decision of the parole panel.

§146.6. Scheduling of Preliminary Hearing

(a) Upon request, the hearings section shall schedule a preliminary hearing unless:

(1) more than seven calendar days have elapsed from the time that the warrant is executed; or

(2) information has not been presented to hearings section that the releasee was served with the following:

(A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause to believe the releasee has committed a parole violation;

(B) written notice of the allegations of parole violation against the releasee;

(C) notice of the right to full disclosure of the evidence;

(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation of the witness;

(F) notice that the case will be heard by a parole panel or designee of the board;

(G) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the board will in all probability revoke; and

(H) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(b) For the purposes of subsection (a)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory supervision and is not charged before the 61st day with the commission of an offense; or

(2) the sheriff having custody of the releasee notifies the division that the releasee has discharged the sentence or that the prosecutor has dismissed the charge under Article 32.02, Texas Code of Criminal Procedure.

(c) If the hearings section receives a request for a preliminary hearing later than the seventh calendar day following the provisions described in subsection (a)(1) of this section, the hearings section shall require the requester to submit the scheduling request directly to

the director of paroles, hearings, and clemency, along with a written explanation of the delay.

(d) Subsection (a)(1) of this section does not apply when a releasee is:

(1) transferred under Article 42.18, Sec. 13A to a correctional facility operated by or under contract with the department; or

(2) returned to custody from another state, a federal correctional institution, or a medical or psychiatric facility.

§146.7. Preliminary Hearing

(a) The parole panel or designee of the board shall conduct the preliminary hearing. The purpose of the preliminary hearing is to determine whether there is probable cause or a reasonable belief that the releasee violated a condition of parole or mandatory supervision.

(b) The preliminary hearing shall be held at or near the location of the alleged violations or arrest, unless:

(1) the releasee is detained in federal custody;

(2) the releasee is being held in a hospital or other facility for diagnosis or treatment of a physical or mental condition; or

(3) the releasee is arrested or detained on the authority of a warrant in a state other than the state of release.

(c) If the decision of the parole panel or designee of the board is that there is probable cause to proceed to a revocation hearing, the parole panel or designee of the board may schedule a revocation hearing.

(d) If the parole panel or designee of the board finds that there is no probable cause to proceed to a revocation hearing or does not schedule a revocation hearing, the parole panel or designee of the board shall collect, prepare, and forward to a parole panel, or to the director of paroles, hearings, and clemency if the hearing was held pursuant to the Interstate Compact Agreement, the following information:

(1) all documents and exhibits offered or admitted into evidence at the preliminary hearing;

(2) a summary report of the evidence relied upon to formulate the hearing officer's findings; and

(3) the tape recording of the hearing.

(e) Following a review of the supporting evidence of rule violations as described in subsection (d) of this section, the parole panel may dispose of the case by taking one of the following actions:

(1) continue the parole or mandatory supervision in any manner warranted by the evidence;

(2) proceed to a revocation hearing; or

(3) refer the case for further action.

(f) No preliminary hearing is required if the releasee:

(1) waives the preliminary hearing;

(2) has been charged only with an administrative violation of a condition of parole or mandatory supervision; or

(3) has been adjudicated guilty of or has pleaded guilty or nolo contendere to an offense committed after release, other than an offense punishable by fine only involving the operation of a motor

vehicle, regardless of whether the court has deferred disposition of the case, imposed a sentence in the case, or placed the releasee on community supervision.

§146.8. Scheduling of Revocation Hearing.

(a) Upon request, the hearings section shall schedule a revocation hearing unless information has not been presented to the hearings section that the releasee was served with the following:

(1) notice of the right to a revocation hearing and that its purpose is to make a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation of parole;

(2) written notice of the allegations of parole violation against the releasee;

(3) notice of the right to full disclosure of the evidence against the releasee;

(4) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(5) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation of the witness;

(6) notice that releasee has an opportunity to be heard and to show that he did not violate the conditions, or if the releasee did, that circumstances in mitigation suggest that the violation does not warrant revocation;

(7) notice that the case will be heard by a parole panel or designee of the board;

(8) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the board will in all probability revoke; and

(9) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(b) If the releasee is not entitled to a preliminary hearing and requests a revocation hearing, the hearings section shall schedule a revocation hearing unless:

(1) more than seven calendar days have elapsed from the time that the warrant is executed; or

(2) information has not been presented to hearings section that the releasee was served with the following:

(A) notice of the right to a revocation hearing and that its purpose is to make a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation of parole;

(B) written notice of the claimed allegations of parole violation against the releasee;

(C) notice of the right to full disclosure of the evidence;

(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the hearing officer

specifically finds good cause for not allowing confrontation of the witness;

(F) notice that releasee has an opportunity to be heard and to show that he did not violate the conditions, or if the releasee did, that circumstances in mitigation suggest that the violation does not warrant revocation;

(G) notice that the case will be heard by a parole panel or designee of the board;

(H) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the board will in all probability revoke; and

(I) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(c) If the hearings section receives a request for a revocation hearing later than the seventh calendar day following the provisions described in subsection (b)(1) of this section, the hearings section shall require the requester to submit the scheduling request directly to the director of paroles, hearings, and clemency, along with a written explanation of the delay.

(d) Subsection (b)(1) of this section does not apply when a releasee is:

(1) transferred under Article 42.18, Sec. 13A to a correctional facility operated by or under contract with the department; or

(2) returned to custody from another state, a federal correctional institution, or a medical or psychiatric facility.

(e) For the purposes of subsection (b)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory supervision and is not charged before the 61st day with the commission of an offense; or

(2) the sheriff having custody of the releasee notifies the division that the releasee has discharged the sentence or that the prosecutor has dismissed the charge under Article 32.02, Texas Code of Criminal Procedure.

§146.9. Revocation Hearing

(a) The parole panel or designee of the board shall conduct the revocation hearing. The purpose of the revocation hearing is to consider the evidence offered pursuant to an allegation of a violation of a condition of parole or mandatory supervision. The parole panel or designee of the board must determine whether it is shown by a preponderance of the credible evidence that the releasee violated a condition of parole or mandatory supervision.

(b) The revocation hearing shall not proceed to the mitigation phase unless it is determined by the parole panel or designee of the board by a preponderance of the credible evidence that the releasee did violate a condition of parole or mandatory supervision.

(c) At the close of the hearing or within a reasonable time thereafter, the parole panel or designee of the board shall collect, prepare and forward to a parole panel or to the director of paroles, hearings, and clemency, if the hearing was held pursuant to the Interstate Compact Agreement:

(1) all documents and exhibits offered or admitted into evidence at the hearing;

(2) a summary report of the hearing separately setting out findings of fact relative to the alleged violation of a condition of parole or mandatory supervision, based on a preponderance of the credible evidence, which includes statements of the evidence relied upon in reaching said finding; and

(3) the tape recording of the hearing.

§146.10. Final Board Disposition

(a) After reviewing the report of the hearing, the parole panel may make final disposition of the case by taking one of the following actions:

(1) continue the parole or mandatory supervision, in any manner warranted by the evidence;

(2) recommend to the governor that the conditional pardon be continued, revoked, or modified; or

(3) revoke the parole or mandatory supervision, provided that all revocation decisions are preceded by a mitigation hearing; or

(4) refer the case to the hearing officer, with or without reopening the hearing, for further development of issues as specified by the parole panel.

(b) If final board disposition is an order to revoke the parole or mandatory supervision, the releasee or attorney shall be notified in writing and provided with a copy of the report of the hearing officer and notice of the right to submit a petition to reopen the hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712860

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-1883



Chapter 149. Mandatory Supervision

Rules and Conditions of Mandatory Supervision

37 TAC §149.1

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §149.1, concerning conditions and rules of mandatory supervision. The Board proposes an amendment to §149.1 for the purpose of clarifying that upon release to mandatory supervision, all conditions of parole or release to mandatory supervision required by law are imposed.

Victor Rodriguez, Chair of the Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the

public benefit anticipated as a result of enforcing the section will be a clarification of the Board's authority under law to make parole decisions.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amended rule is proposed under the Code of Criminal Procedure, Article 42.18, §7 and §8 (a) - (g), which directs a parole panel to impose conditions of parole or release to mandatory supervision.

There is no cross-reference to the proposed amended rule.

§149.1. Conditions and Rules of Mandatory Supervision.

Every inmate being released on mandatory supervision shall be issued a written statement listing the conditions and rules of mandatory supervision in clear and intelligible language ; **and, upon release to mandatory supervision, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed.** The releasee may have additional conditions imposed by a parole panel after release, and shall be notified in writing of any such conditions. Continuance on mandatory supervision is conditioned upon full compliance with all conditions and rules of mandatory supervision as imposed by the parole panel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712859

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-1883

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of §§700.101 and 700.334-700.336; proposes amendments to §§700.315-700.318, 700.322, 700.330, 700.513, 700.1105, 700.1310, 700.1314, 700.1315, 700.1332, 700.1501, 700.1502, 700.1504, 700.1505, and 700.1718; and proposes new §§700.334, 700.522, and 700.1506 in its Child Protective Services chapter. The purpose

of the proposal is to incorporate legislative changes that were enacted by the 75th Legislature, Regular Session, 1997.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved permanency decision efforts for families and children and public access to correct information. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Max Villarreal at (512) 438-5443 in TDPRS's Child Protective Services department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-308, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Administration

40 TAC §700.101

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The repeal implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.101. Fiscal Resources for Child Welfare Contracts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712902

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765

◆ ◆ ◆
Subchapter C. Eligibility for Child Protective Services

40 TAC §§700.315-700.318, 700.322, 700.330, 700.334

The amendments and new section are proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments and new section implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.315. Foster Care Maintenance Resources.

(a) Foster care assistance is financial and medical coverage provided by **Title IV-E** [aid to families with dependent children (AFDC)] foster care, medical assistance only (MAO) foster care, or state-paid foster care. All other financial resources to which a child is entitled must be used before **Title IV-E** [AFDC], MAO, or state-paid foster care is used to pay for the cost of a child's foster care.

(b) **Title IV-E** [AFDC] foster care is a program for children who meet ~~the~~ [categorical] requirements for **the foster care assistance program funded by Title IV-E of the Social Security Act** [AFDC financial assistance and other program requirements]. Program benefits include Medicaid coverage and foster care payments.

(c) **Medical Assistance Only (MAO)** [MAO] foster care provides Medicaid benefits to needy children who meet the financial requirements but are not otherwise eligible for **Title IV-E** [AFDC] or state-paid foster care. **The care for these children is provided at no cost to the Texas Department of Protective and Regulatory Services.** [Foster care payments are provided through contractual arrangements with local counties.]

(d) State-paid foster care provides foster care maintenance payments and Medicaid coverage to children who meet the requirements contained in §700.316 and §700.318 of this title (relating to Eligibility Requirements for **Title IV-E**, [AFDC], MAO, and State-paid Foster Care Assistance and Additional Eligibility Requirements for State-paid Foster Care Assistance.)

§700.316. Eligibility Requirements for Title IV-E [AFDC], MAO, and State-Paid Foster Care Assistance.

The child must meet all of the following criteria to be eligible for **Title IV-E** [Aid to Families with Dependent Children (AFDC)], Medical Assistance Only (MAO), or state-paid foster care assistance.

(1) Responsibility for Placement and Care. The Texas Department of Protective and Regulatory Services **TDPRS** [PRS] must have the responsibility for the child's placement and care. This requirement is met if:

(A) The child is placed in **TDPRS's** [PRS's] managing conservatorship by written court order issued under Title 5, Texas Family Code;

(B) The child is placed by **TDPRS** [PRS] under the statutory authorization of Texas Family Code, §262.104; or

(C) The child lives with his minor parent, and the minor parent is in **TDPRS's** [PRS's] managing conservatorship. The child and the minor parent must reside together in the same foster family home or child-care institution.

(2) (No change.)

(3) Age if attending school. A youth's eligibility for foster care assistance can be extended until the end of the month of his graduation from high school or the end of the month of his completion of vocational or technical training classes when the conditions specified in subparagraph (A) of this paragraph are satisfied or when the conditions specified in subparagraphs (B) or (C) of this paragraph are satisfied in addition to the conditions in subparagraph (A) of this paragraph.

(A) (No change.)

(B) Special condition affecting **Title IV-E** [AFDC] foster-care assistance. If a youth receives a general equivalency diploma (GED) and enrolls in vocational or technical training classes before his 18th birthday, the youth's eligibility for **Title IV-E** [AFDC] foster-care assistance may be extended until the end of the month in which he completes **or withdraws from** the vocational or technical training, as long as the youth is scheduled to complete the training before or during the month of his 19th birthday.

(C) Special condition affecting state-paid foster-care assistance. A youth who is scheduled to graduate from high school after his 19th birthday is eligible to receive state-paid foster-care assistance from the beginning of the first full month following his 18th birthday until the end of the month of his graduation **or withdrawal**, as long as the youth is scheduled to graduate from high school before or during the month of his 20th birthday.

[(4) Citizenship and Alien Status. The child must be a citizen of the United States or an alien:]

[(A) lawfully admitted for permanent residence;]

[(B) granted temporary residence status under the Immigration Reform and Control Act of 1986, Public Law 99-603; or]

[(C) permanently residing in the United States under color of law (PRUCOL). A deportable alien living in the United States with the continuing knowledge and permission of the Immigration and Naturalization Service is PRUCOL.]

(4)[(5)] Placement. The child must be receiving care in Texas in a licensed, certified, or verified foster home or a licensed, private, nonprofit child-caring institution approved for TDPRS foster-care assistance, except in the following circumstances.

(A) The child is in permanent foster family care and the foster family must move out of state. The foster family must secure foster care licensing in the new state of residence within 90 days, or the child's eligibility for foster care assistance will be terminated until appropriate licensing is secured. The TDPRS program director may grant one extension of no more than 60 days, but only if it is clear that the foster family will be licensed in the additional time.

(B) The child must be removed from an out-of-state adoptive or foster care placement; and TDPRS determines that another out-of-state placement will better meet the child's needs than a return to Texas.

(C) Under the service plan, the child is to be reunited with his biological family and must be moved out of state in order to live near the family.

(D) The child qualifies for Level of Care (LOC) VI, and no nonprofit, residential child care facility that can meet the

child's needs is available in the area in which the child must be placed. When no nonprofit facility is available for a LOC VI child, the child may receive care in a licensed, for-profit facility that provides LOC VI services. The facility must enter into an agreement with TDPRS to provide services to children in the department's conservatorship at the department's normal payment rates. A child placed in a for-profit facility at LOC VI may continue to receive care in the facility if his LOC changes, as long as

(i) the child's needs are best served by his remaining in the facility, and

(ii) the facility agrees to continue serving the child at the new LOC.

(5) [(6)] **Resources.** The child must not have equity in real or personal property in excess of \$1000.

(6) [(7)] **Income.** The child's monthly income must be less than the daily rate paid to the child-care facility for the child's maintenance. Countable income includes [child support;] supplemental security income (SSI); retirement, survivors, and disability insurance (RSDI); Veterans Administration (VA) benefits; any other dependent or survivor's income; **funds resulting from the child's Indian heritage**; or other income from private sources. The following types of income are not counted in determining eligibility:

(A) Earnings of a child who is:

(i) a full-time student;

(ii) a part-time student and not a full-time employee. Full-time employment is 30 hours or more per week;

(B) money given as a gift on an irregular basis by the parent to the child;

(C) educational loans or grants, such as scholarships, to the child if provided for purposes other than regular maintenance;

(D) **child support payments received by or forwarded to the Office of the Attorney General.**

(7) [(8)] **Lump-sum Income.** Nonrecurring lump-sum payments received after certification for foster care assistance are generally considered as countable income. Exceptions are detailed in §§3.3208 - 3.3213 of this title (relating to Income) in the AFDC chapter of rules. If the lump-sum payment plus other countable income for a month is equal to or greater than the cost of foster-care maintenance, the child is ineligible for a period of time. The period of ineligibility is determined by dividing the amount of the lump-sum payment and other countable income by the monthly cost of care. The resulting whole number is the number of months the child is ineligible for foster care assistance. Any remaining amount from this division is considered as income the first month after the period of ineligibility.

(8) [(9)] **Social Security number.** The child must have, or must have applied for, a social security number.

§700.317. *Additional Eligibility Requirements for Title IV-E [AFDC] Foster Care.*

(a) Besides the general eligibility requirements specified in §700.316 of this title (relating to Eligibility Requirements for **Title IV-E**, [AFDC,] MAO, and State- paid Foster Care Assistance), a child must meet the following additional requirements to qualify for

Title IV-E [Aid to Families with Dependent Children (AFDC)] foster care assistance.

(1) **TANF (Temporary Assistance for Needy Families** [AFDC] status. At least one of the following conditions must apply.

(A) The child was a **TANF** [an AFDC] recipient during the month in which the court proceedings were initiated that resulted in the child's removal from the home.

(B) The child would have received **TANF** [AFDC] benefits during the month in which court proceedings were initiated if application had been made.

(C) At some time during the six-month period before the month in which court proceedings were initiated, the child lived with a relative as specified in paragraph (3) of this subsection; and the child would have received **TANF** [AFDC] benefits if he had been living with that relative during the month in which court proceedings were initiated.

(D) The child lives with his minor parent, and the minor parent is in the Texas Department of Protective and Regulatory Services' (**TDPRS's**) [(PRS's)] managing conservatorship. As long as the child continues to live with the minor parent, a separate court-ordered removal is not required for the child to qualify for **Title IV-E** [AFDC] foster care assistance.

(E) The child was removed from a family that had qualified for the **TANF** [Aid to Families with Dependent Children]–Unemployed Parent [(AFDC-UP)] program at the time of the child's removal, or from a family that would have qualified if it had applied. This subparagraph is applicable as of October 1, 1990.

(2) **Judicial determination.**

(A) In a nonemergency removal, the court must determine that **TDPRS** [PRS] made reasonable efforts to prevent removal and to reunify the family.

(B) In an emergency removal, the court must determine either:

(i) that **TDPRS** [PRS] made reasonable efforts to prevent removal and to reunify the family; or

(ii) (No change.)

(C) In both emergency and nonemergency removals, the court's original order placing the child in **TDPRS's** [PRS's] conservatorship must include a statement that removal is in the child's best interest.

(3) (No change.)

(4) **Need.** The child's family must have been living at subsistence level or below according to **Aid to Families with Dependent Children (AFDC)** [AFDC] income standards **in effect July 16, 1996**. If the child has a stepparent living in the home, the stepparent's income is considered according to the rules governing stepparent income for AFDC eligibility in effect **July 16, 1996**.

(5) **Citizenship or alien status.** The child must be a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) For purposes of determining eligibility for foster care assistance, **TDPRS** [PRS] considers court proceedings initiated when:

(1)-(2) (No change.)

§700.318. Additional Eligibility Requirements for State-paid Foster Care Assistance.

(a) Besides the general requirements for foster care eligibility, a child must meet the following criteria to be eligible for state-paid foster care:

(1) The child must not be eligible for **Title IV-E** [AFDC] foster care.

(2)-(3) (No change.)

(4) the court order naming the Texas Department of Protective and Regulatory Services (**TDPRS**) [(PRS)] as the child's managing conservator must be issued under an article other than §161.001(1)(J)(i), and (ii) of the Texas Family Code. The suit, resulting in TDPRS [PRS] being named the managing conservator, must have been initiated on **TDPRS's** [PRS's] behalf.

(b) **State-paid foster care is available without regard to the citizenship or alien status of the child or the child's family.** [After establishing a child's eligibility for state-paid foster care, PRS must determine the source of funding for the child's medical assistance payments. Medical assistance may be provided through one of the following based on the income available to the child:]

[(1) Regular Medicaid coverage. The child's income is the same or below the AFDC recognized needs standard.]

[(2) Medically Needy Medicaid coverage. The child's income is between the AFDC recognized needs standard and the needs standard in the Medically Needy program.]

[(3) State-paid Medicaid coverage. The child's income is above both the AFDC recognized needs standard and the needs standard in the Medically Needy program.]

§700.322. Eligibility in Placements Provided by Relatives.

(a) **A child who is** [Children] placed with **a relative whose home is** [relatives whose homes are] licensed or verified to provide foster care **is** [are] eligible for Title IV-E [AFDC, MAO,] or state-paid foster care if other eligibility requirements are met.

(b) (No change.)

(c) **A child who is placed with an unlicensed relative or significant other is eligible for MAO foster care as long as he remains in TDPRS managing conservatorship.**

§700.330. Billing and Payment for Foster Care Assistance.

(a) (No change.)

(b) **The Texas Department of Protective and Regulatory Services (TDPRS) foster care billing staff use the Child and Adult Protective System to pay TDPRS foster homes and contracted facilities.** [Foster care providers use the Purchase Voucher for Individual Providers form and the Foster Care Pre-Bill form to claim payment for aid to families with dependent children (AFDC) and state-paid foster care assistance. In counties with a child welfare contract, the child welfare board pays the foster care facility. The Texas Department of Protective and Regulatory Services (PRS) reimburses the county for payments for eligible children. In counties without child welfare contracts, PRS pays the foster care providers directly.]

(c) **If a county pays** [counties pay] for foster care for **the care of a child who is ineligible for state-provided foster care**

assistance or if a child's funds are used, the rate must be the same rate as TDPRS pays for the same level of care. [medical assistance only (MAO) foster care children or use children's private funds, the county must pay the same rate as PRS pays. If a county pays a higher rate than PRS pays, the county must supplement PRS's payment with local funds.]

(d) **If a child dies while in TDPRS managing conservatorship, TDPRS may take action to recover the cost of foster care from the estate of the child.**

§700.334. Additional Eligibility Requirements for Medicaid Assistance Only (MAO) Foster Care.

If a child under age 19 is living with a relative other than either of his parents and is not certified for Title IV-E or state-paid foster care, then he is eligible for MAO foster care. If the child is not living with a relative, then he must be under age 18.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712903

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765

40 TAC §§700.334–700.336

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The repeals implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.334. Foster Care for Refugee or Entrant Foster Children.

§700.335. Eligibility Criteria for Receipt of Refugee or Entrant Foster Care.

§700.336. Rate of Payment for Refugee or Entrant Foster Care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712904

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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Subchapter E. Intake, Investigation, and Assessment

40 TAC §700.513, §700.522

The amendment and new section are proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendment and new section implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.513. Notification about Results.

(a) **Required notification** [Notification] in abbreviated and thorough investigations.

(1) **Who must be notified.** The Texas Department of Protective and Regulatory Services (TDPRS) must notify the following parties about the **findings** [disposition] of an **abbreviated or thorough** investigation **unless** one of the exceptions specified in subsection (d) of this section apply:

(A) [(1)] each alleged victim who was interviewed during the investigation;

(B) [(2)] **each custodial parent** [the parents] of each alleged victim;

(C) [(3)] **each non-custodial parent of each alleged victim** [all absent parents of alleged victims, except for absent parents who are abusive, dangerous, or otherwise unlikely to protect the child];

(D) each legal guardian, if one has been appointed, of each alleged victim;

(E) [(4)] each person **identified** [interviewed] as an alleged perpetrator; and

(F) [(5)] the person who reported the **alleged** [apparent] abuse or neglect, if his identity is known.

(2) **Time frame for providing notice.** TDPRS must provide notice to the persons specified in paragraph (1) of this subsection within 15 days after the investigation is closed unless law enforcement staff have requested that the notification be delayed because timely notification would interfere with an ongoing criminal investigation. When law enforcement staff withdraw their request, TDPRS staff must then provide the notification unless more than 15 days have expired after the investigation is closed.

(b) **Required notification in administratively closed investigations.**

(1) **Who must be notified.** TDPRS must notify the following parties about the findings of an investigation that was

closed administratively, unless one of the exceptions specified in subsection (d) of this section apply:

(A) each custodial parent of each alleged victim;

(B) each non-custodial parent of each alleged victim;

(C) each legal guardian, if one has been reported, of each alleged victim; and

(D) the person who reported the alleged abuse or neglect, if his identity is known.

(2) **Time frame for providing notice.** TDPRS must provide notice to the parents and guardian specified in paragraph (1) of this subsection no later than 24 hours after the close of the investigation and to the reporter within 15 days unless law enforcement staff have requested that the notification be delayed because timely notification would interfere with an ongoing criminal investigation. When law enforcement staff withdraw their request that TDPRS delay notification, TDPRS will then provide the notification unless more than 15 days have expired after the investigation is closed.

(c) **Optional provision of investigation findings upon request.** TDPRS may provide information about the findings of the investigation to the custodial and non-custodial parents and legal guardian of any child in the home involved in the investigation, at the parent's or guardian's request, unless one of the exceptions specified in subsection (d) of this section exists.

(d) **Exceptions to providing notification.**

(1) **Unable to locate.** During the investigation, TDPRS was unable to locate the person entitled to notification despite having made reasonable efforts to locate the person.

(2) **Safety exception.** Notwithstanding requirements to notify certain persons of investigation results, TDPRS must not provide the notice when TDPRS determines that the notice is likely to endanger the safety of any child in the home, the reporter, or any other person who participated in the investigation of the report.

(3) **Law enforcement exception.** Law enforcement staff indicate that the release of the information would interfere with an ongoing criminal investigation or prosecution.

(4) **Administrative closure exception.** TDPRS must not provide required notifications or optional information about findings to parents and the guardian if an investigation is being closed administratively because the report was referred for investigation to another authorized entry, such as law enforcement or another state agency.

(e) [(b)] **Form of notification.** [Except as specified in subsection (c) of this section,] TDPRS's notifications about the **findings** [disposition] of an investigation may be either written or oral, except the notifications in paragraphs (1)-(2) of this subsection must be provided in writing: [.]

(1) written notification of the designated perpetrator, or designated victim perpetrator; and

(2) written notification of an alleged perpetrator when all allegations in the case involving the person as an alleged perpetrator have been ruled out.

(f) [(c)] **Required written** [Written] notification of the designated perpetrator or designated victim/perpetrator. [Within 15 days after completing an investigation,] TDPRS must give written notice of the findings of the investigation to everyone who has been identified as a designated perpetrator or designated victim/perpetrator as specified in §700.512(b)(1) of this title (relating to Conclusions About Roles). For a designated victim/perpetrator, the notice is sent to the child's parents. [Under the Texas Family Code, §261.309(f), however, this requirement does not apply to cases in which a court determination is consistent with a finding that there is reason to believe that abuse or neglect has occurred, as specified in §700.511(1) of this title (relating to Disposition of the Allegations of Abuse or Neglect).]

(g) **Required written notification of an alleged perpetrator when all allegations involving the person as an alleged perpetrator have been ruled-out. TDPRS must give written notice of the right to request removal of role information to each person who was identified as an alleged perpetrator when all the allegations in the case involving the person as an alleged perpetrator have been ruled out. For a person fitting this category who is a minor, the notice may be sent to the minor's parents.**

(h) [(d)] Notifying the reporter. If the person who reported the **alleged** [apparent] abuse or neglect is not a professional working with the family, TDPRS's notification to the reporter discloses only:

- (1) that TDPRS investigated the report, and
- (2) whether or not TDPRS will work with the family.

[(e) Notification in administratively closed investigations. When an investigation is closed administratively, TDPRS staff notify:]

- [(1) the person who reported the apparent abuse or neglect, if his identity is known; and]
- [(2) the parents as described in the Texas Family Code, §261.311, if a child was interviewed.]

§700.522. Audiotaping or Videotaping Interviews with Alleged Victims.

Texas Department of Protective and Regulatory Services (TDPRS) staff must make a reasonable and good faith effort to audiotape or videotape interviews with child victims of physical or sexual abuse unless good cause exists not to audiotape or videotape the interviews. Good cause exceptions to audiotaping or videotaping interviews include, but may not be limited to, the reasons specified in paragraphs (1)-(8) of this section.

(1) The alleged victim cannot communicate verbally at the time of the interview because of his level of functioning or because of any other physical or mental or emotional impairment.

(2) The alleged victim is over age 12 and is able to provide a written statement about alleged abuse.

(3) The alleged victim refuses to be interviewed on audiotape or videotape, and TDPRS determines that the only reasonable way to obtain an interview with the child is to conduct the interview without audiotaping or videotaping it.

(4) The alleged physical abuse to the child does not appear to be likely to endanger the child's life or to result in permanent functional impairment, death, or disfigurement if untreated.

(5) Certain corroborating evidence exists as to the identity of the perpetrator, such as an admission by an alleged perpetrator, a statement by a third party witness to the abuse, or physical evidence.

(6) The interview is for purposes other than to conduct the initial investigative interview of the child victim. The initial investigative interview is the first thorough interview which is conducted in the investigation for the purpose of obtaining the facts as reported by the child victim about the reported allegations.

(7) TDPRS may accept an initial investigative interview of the child victim which was conducted by another entity rather than TDPRS conducting this initial investigative interview. In this instance, good cause exists for the interview not having been audiotaped or videotaped when the substitute initial investigative interview was:

(A) audiotaped or videotaped; or

(B) not audiotaped or videotaped but a good cause exception as outlined in this section exists for the substitute initial investigative interview not having been audiotaped or videotaped.

(8) Audiotaping or videotaping the interview would be contrary to the child victim's best interest, for reasons that include, but are not limited to, the reasons specified in subparagraphs (A)-(E) of this paragraph:

(A) Audiotaping or videotaping the interview would unnecessarily delay obtaining the interview.

(B) Audiotaping or videotaping the interview would unnecessarily interfere with the child's disclosure of abuse.

(C) Audiotaping or videotaping the interview would result in unnecessary multiple initial investigative interviews.

(D) The child's therapist or doctor recommends against the interview being audiotaped or videotaped because doing so would be contrary to the child's emotional health or condition.

(E) The physical location where it is reasonable to conduct the interview is not conducive to audiotaping or videotaping the interview.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3765

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Subchapter K. Court-Related Services

40 TAC §700.1105

The amendment is proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264,

which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendment implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1105. Diligent Search for Missing Parents.

When the whereabouts of one or more legal parents of a child in the Texas Department of Protective and Regulatory Services' managing conservatorship are unknown, Child Protective Services must make a diligent search for:

(1) each missing parent. **For alleged biological fathers or probable fathers, a request to search the Paternity Registry of the Texas Department of Health, Bureau of Vital Statistics must be completed effective September 1, 1997;** and

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3765



Subchapter M. Substitute Care Services

40 TAC §§700.1310, 700.1314, 700.1315, 700.1332

The amendments are proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1310. Permanency Planning.

(a) Definition. Permanency planning consists of:

(1) the identification of a safe and permanent living situation as the goal towards which **Child** [the Office of] Protective Services (**CPS's**) [for Families and Children's (PSFC's)] services to a child (and usually to the child's family) are directed; and

(2) (No change.)

(b) (No change.)

(c) Selecting a goal. To establish a permanency plan for a child, **CPS** [PSFC] tries to select the permanency-planning goal that best serves the child's interest and long-term needs, including the child's needs for belonging, stability, and continuity of care. To this end, the worker must assess the child's needs, then identify the least

disruptive available goal that is likely to meet those needs without compromising the child's safety.

(d) **Documenting the goal. The permanency goal selected for a child is recorded in the:**

(1) **case plan (child and family service plan); and**

(2) **permanency reports submitted to the court for the permanency hearings conducted while a case is in temporary legal status.**

(e) [(d)] Revising the plan. If a previously established permanency-planning goal proves to be unrealistic, the goal must be changed.

(f) **Finalizing the plan. By the sixth month a child has been in care, TDPRS must finalize what permanency goal it wants to pursue for a child so that:**

(1) **a recommendation can be made during the Permanency Planning Team (PPT) staffing held during the sixth month that a child is in care;**

(2) **a recommendation can be made for the first court permanency hearing held six months from the date that TDPRS was named temporary managing conservator (TMC); and**

(3) **appropriate actions can be taken to obtain a dismissal, a final order, or a continuance by the Monday after the anniversary date that TDPRS was named temporary managing conservator.**

§700.1314. Adoption.

(a) Definition. The permanency-planning goal of adoption:

(1) identifies the home of an adoptive family as the safe and permanent living situation towards which **Child** [the Office of] Protective Services (**CPS's**) [for Families and Children's (PSFC's)] services are directed; and

(2) indicates that **CPS** [PSFC]:

(A)-(B) (No change.)

(C) will try to find and prepare **a legal risk or** an adoptive family for the child.

(b) Selection criteria. **CPS** [PSFC] selects adoption as a child's permanency-planning goal when:

(1) **CPS** [PSFC] has removed the child from his home to protect him from abuse or neglect;

(2)-(3) (No change.)

(c) Priority. Although **CPS** [PSFC] can select adoption as a child's permanency-planning goal at any time, staff generally do not select adoption until they have tried working towards family reunification first. In most cases, when **CPS** [PSFC] changes a child's permanency-planning goal from family reunification to adoption, the child's parents have demonstrated over a period of at least **five** [six] months that they are unwilling or unable to make the changes needed to reduce the risk of abuse or neglect **or there has been a decision at the time of removal to seek termination of parental rights without working towards reunification services.**

§700.1315. Alternative Long-Term Care.

(a) Definition. The permanency-planning goal of alternative long-term care:

(1) identifies the home or facility of a substitute caregiver as the safe and permanent living situation towards which **Child** [the Office of] Protective Services (**CPS's**) [for Families and Children's (PSFC's)] services are directed; and

(2) indicates that **CPS** [PSFC]:

(A)-(C) (No change.)

(b) Selection criteria. The criteria for selecting alternative long-term care as a child's permanency-planning goal depend on the type of care under consideration. There are four possibilities.

(1) (No change.)

(2) Foster care with a commitment to raise the child to adulthood. **CPS** [PSFC] may select this type of long-term care as a child's permanency-planning goal if:

(A)-(C) (No change.)

(3) Foster care without a commitment to raise the child to adulthood. **CPS** [PSFC] may select this type of long-term care as a child's permanency-planning goal if:

(A)-(D) (No change.)

(4) **Other** [Another] living arrangement. **CPS** [PSFC] may accept another living arrangement as a child's permanency-planning goal if:

(A)-(B) (No change.)

(C) the child needs **CPS's** [PSFC's] services, but will not receive them unless **CPS** [PSFC] accepts the reality of the child's current living arrangement; and

(D) (No change.)

§700.1332. *The Family's Service Plan.*

(a) Time frame. Within **21** [45] days after a child's placement in substitute care, [the Office of] **Child** Protective Services (**CPS**) [for Families and Children (PSFC)] must develop a written plan for services to the family unless:

(1)-(2) (No change.)

(b) (No change.)

(c) Required content. The family's service plan must:

(1)-(3) (No change.)

(4) describe the services **CPS** [PSFC] must provide to help the family complete those tasks; and

(5) indicate how **CPS** [PSFC] will evaluate the family's completion of those tasks.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3765



Subchapter O. Foster and Adoptive Home Development

40 TAC §§700.1501, 700.1502, 700.1504-700.1506

The amendments and new section are proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments and new section implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1501. *Decision on Foster Home Applications.*

[(a)] To be accepted as a foster home, the home must meet the department's minimum standards, and the Texas Department of Protective and Regulatory Services must have determined, through the foster-home screening and study, that the parents can provide adequate care for foster children in the department's managing conservatorship and that they will follow the department's policies for discipline of these children as specified in **§700.1502 (2)(L)** [§700.1502(13)] of this title (relating to **Foster and Adoptive Home Inquiry and Screening**).

[(b)] Foster parents and foster parent recruits and applicants have a right to an administrative review of the decision to not approve their application to be foster parents or to close the foster home.]

§700.1502. *Foster and Adoptive Home Inquiry and Screening.*

The Texas Department of Protective and Regulatory Services' (TDPRS') policies for **responding to inquiries and screening and approval of foster and adoptive homes** are as follows:

(1) **Responding to inquiries.** TDPRS receives inquiries as a result of recruitment efforts by staff, volunteers, foster and adoptive parents, foster and adoptive parent associations, and other organizations that work with TDPRS. When inquiries are received, staff should provide a written response within 10 working days to provide families information about the process of becoming a foster or adoptive parent with TDPRS.

(2) **Screening and approval of foster and adoptive homes.**

(A) [(1)] Age. All applicants must be at least 21 years of age or older. Age is evaluated in relation to life expectancy and maturity. The applicants' life expectancy must be long enough for the applicants to be able to raise the child to adulthood. Applicants who are nearing retirement age usually are only considered and approved for adolescent children.

(B) [(2)] Marriage. If married, both spouses must apply and their license or declaration of marriage must be recorded. If separated and not divorced, adoptive applicants must finalize the divorce prior to being approved as an adoptive parent.

(C) [(3)] Length of marriage. Couples must be married at least two years before TDPRS accepts an adoption

application, unless the following exception is made. Exception: If the couple cohabitated for two years prior to the marriage or obtained a civil registration of common law marriage for the length of time required, the worker should assess the impact of the marriage on the stability of the couple's relationship to determine the appropriateness of making an exception.

(D) [(4)] Single parents. Single parents are evaluated in terms of their ability to nurture and provide for a child without the assistance of a spouse. Placement with a single parent is considered the best plan for some children.

[(5)] Fertility. Fertility assessments are required only if TDPRS believes the couple needs to know more about their fertility before they adopt a child. The couple's fertility is important only in relation to resolution of their feelings about their infertility and their ability to accept and parent a child not born to them.]

(E) [(6)] Disabilities. Disabilities are evaluated in relation to the applicants' adjustment to the disability and the limits, if any, the disability imposes on the applicants' ability to care for a child.

(F) [(7)] Residence. Adoptive home studies are started only if the applicants will live in the community long enough for PRS to complete a study and make a placement. Exceptions are made in unusual situations which involve a child with special needs if another licensed child placing agency in the new community agrees to complete the adoption services.

(G) [(8)] Adoption by foster families. Foster families are evaluated using the same criteria applied to any other adoptive applicants. The home study must be updated to meet the minimum standards for adoptive homes. The evaluation focuses on the family's demonstrated skill and ability to parent the children TDPRS has placed in the family's care and determines the attachment the family and the child have to each other.

(H) [(9)] Family's ability to help the child. Applicants are evaluated based on their ability to:

(i) [(A)] help the child;

(I) [(i)] develop a sense of identity consistent with the child's racial and ethnic background; and

(II) [(ii)] learn to cope with difficulties that may arise from racial or ethnic differences, both within and outside the adoptive family; and

(ii) [(B)] develop a plan for helping the child manage the issues described above as the child reaches developmental milestones.

(I) [(10)] Finances. Although there are no specific income requirements, the applicants must have enough income, and be able to manage it well enough, to meet the child's basic material needs. Income is also evaluated in terms of past and present management.

(J) [(11)] Health. The applicants' physical and mental health must be sufficient to assume parenting responsibilities. Physical and mental conditions are considered to protect the child against another loss of parenting through death, incapacity, or repetition of abuse or neglect.

(K) [(12)] Religion. There are no specific religious requirements. Applicants are evaluated based on:

(i) [(A)] Their willingness to respect and encourage a child's religious affiliation.

(ii) [(B)] Their willingness to provide a child opportunity for religious, spiritual, and ethical development.

(iii) [(C)] The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.

(L) [(13)] Discipline. Physical discipline may not be used on a child in any TDPRS foster or adoptive home prior to consummation. TDPRS evaluates applicants based on their willingness and ability to:

(i) [(A)] recognize and respect differences in children, especially children who have been abused or neglected;

(ii) [(B)] employ methods of discipline that suit the particular needs and circumstances of each child; and

(iii) [(C)] employ methods of discipline that conform to the policies specified in §700.1340(c) of this title (relating to Special Issues).

(M) [(14)] Criminal history.

(i) [(A)] Criminal history checks are required for all persons 18 years old and older who live in the applicant's home. **A criminal history check may be completed for persons who have child care responsibilities for the children in the managing conservatorship of TDPRS.** Criminal history is evaluated in terms of the potential danger it presents to placement, rearing, and protection of children. Persons who have been convicted of offenses against the person, offenses against the family, public indecency, or a felony violation of the Texas Controlled Substances Act must submit proof of rehabilitation to TDPRS for their application to be considered further.

(ii) [(B)] TDPRS staff may provide a copy of the criminal records check received from the Texas Department of Public Safety or local law enforcement to the court when the court will accept the material in lieu of ordering adoptive parents to provide their own criminal records check to the court.

(iii) **Criminal history checks for foster and adoptive parents are required to be updated every two years to determine if a criminal action has occurred since the subsequent information was obtained from the Texas Department of Public Safety or local law enforcement.**

(iv) **Criminal history checks for adoptive parents must be valid within one year of the time the court orders a criminal history based on a petition filed for adoption. If the criminal history is not within one year, a new criminal history is required.**

(N) **Adoptive home studies - fertility. Fertility assessments are required only if TDPRS believes the couple needs to know more about their fertility before they adopt a child. The couple's fertility is important only in relation to resolution of their feelings about their infertility and their ability to accept and parent a child not born to them.**

§700.1504. *Approval of Foster and/or Adoptive Home Study.*

The Texas Department of Protective and Regulatory Services (TDPRS) [(PRS)] evaluates applicants based on the applicants' ability to care for specific children needing placement. TDPRS [PRS] approves home studies based on an evaluation of the applicants' total situation; their flexibility in all areas of life; their sensitivity and understanding of children's needs, and their ability to meet the developmental, maintenance, and protection needs of children in TDPRS's [PRS's] managing conservatorship. **The written assessment or home study of the family must be completed within four months after all information and documentation is returned by the family or must begin within two weeks after pre-service training. Staff must submit the home study to the supervisor for approval. Supervisors must approve the home study within 30 days. If a family does not return all information and documentation necessary to complete the assessment and home study documentation within time frames, staff need to inform the family that their case will be closed and they may reapply to become foster or adoptive parents at a later time. Families who reapply within one year of completing pre-service are only required to complete an overview training. Families who reapply after one year of pre-service must attend pre-service training again.**

§700.1505. *Administrative Review.*

(a) Adoptive recruits and applicants are entitled to an administrative review of the decision not to approve their adoptive home for placement of a child.

(b) **Foster parents and foster parent recruits and applicants have a right to an administrative review of the decision to not approve their application to be foster parents or to close the foster home.**

§700.1506. *Monitoring of Foster Parent Performance.*

The Texas Department of Protective and Regulatory Services (TDPRS) shall monitor the performance of a foster parent who has been verified by TDPRS. The method for performance monitoring must include objective criteria by which the foster parent can be assessed and references to the criteria will be in the agreement between TDPRS and the foster parent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712908

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



Subchapter Q. Purchased Protective Services

40 TAC §700.1718

The amendment is proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264,

which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendment implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1718. *Purchased Adoption Services.*

(a) Types of providers.

(1) The Texas Department of Protective and Regulatory Services (TDPRS) purchases adoption services **and legal risk placement services** from private child-placing agencies that have been licensed to place children for adoption by:

(A)-(B) (No change.)

(2) (No change.)

(b) Purpose. **Child** [The Office of] Protective Services (CPS) [for Families and Children (PSFC)] purchases adoption services **and legal risk placement services** to increase the likelihood of securing **legal risk and** adoptive homes for children in TDPRS's managing conservatorship who require special or intensive services.

(c) Client eligibility.

(1) Criteria. **CPS** [PSFC] purchases adoption services **and legal risk placement services** for children in TDPRS's managing conservatorship who:

(A)-(D) (No change.)

(2) Exception. **CPS** [PSFC] does not purchase adoption services in adoptions by **CPS** [PSFC] foster parents.

(d) Types of purchased adoption services.

(1) When appropriate under the provisions in subsections (a)-(c) of this section, TDPRS contracts with providers to purchase the following types of **legal risk placement services and** adoption services:

(A) placement services, including:

(i) recruitment, [and] screening, **and training** of adoptive families;

(ii) adoptive home studies; [and]

(iii) (No change.)

(iv) **placement and supervision services; and**

(B) (No change.)

(2)-(3) (No change.)

(e) Reimbursement of purchased **legal risk placement services and** adoption services.

(1) Basis of payment. TDPRS has established maximum payable amounts for purchased **legal risk and** adoption services. The maximums are based on the costs that TDPRS incurs for providing adoption services directly.

(2) Maximum payable amounts and required documentation. The following chart presents:

(A) (No change.)

(B) the documentation that contractors must provide to receive payment.

Figure 1: 40 TAC §700.1718(e)(2)(B)

- (3) (No change.)
- (4) Payment for sibling-group **legal risk placements and** adoptions. When a contractor places a sibling group in a single home for **legal risk or** adoption and the contractor's total allowable costs in the **legal risk or** adoption exceed the maximum payable amounts specified above, TDPRS's payments to the contractor can exceed those maximums as long as:
 - (A)-(B) (No change.)
- (5) Payment for subsequent placements.
 - (A) When a **legal risk or** an adoptive placement is disrupted and the original contractor subsequently places the same child in another **legal risk or** adoptive home, TDPRS ordinarily reimburses the contractor for the subsequent placement as if it were a new placement.
 - (B) (No change.)
- (6) Payable services restricted to the contract period.
 - (A) The following conditions must be satisfied for TDPRS to reimburse a contractor for purchased **legal risk or** adoption services:
 - (i)-(ii) (No change.)
 - (B) (No change.)
- (7) (No change.)
- (f) The plan of operation for purchased **legal risk or** adoption services. In addition to including the elements specified in §700.1705(b) of this title (relating to Contract Documentation), the plan of operation in contracts for purchased adoption services must include the statements, agreements, and stipulations specified in this subsection:
 - (1) Referral.
 - (A) A list of the documents that **CPS [PSFC]** must give the contractor when it refers a child for purchased adoption services. The list:
 - (i) (No change.)
 - (ii) may also include other information that **CPS [PSFC]** and the contractor consider helpful in recruiting, studying, and preparing prospective adoptive families.
 - (B) A description, by age, race, and disability, of the types of children whom **CPS [PSFC]** expects to refer to the contractor.
 - (C) A stipulation that the children whom **CPS [PSFC]** refers to the contractor must **have a permanency plan of adoption and be working towards becoming legally free for adoption or must already** be legally free for adoption.
 - (D) A stipulation that, to help the contractor assess a child's needs, **CPS [PSFC]** must give the contractor access to:
 - (i) (No change.)
 - (ii) the child's foster parents **or caretakers** ; and
 - (iii) (No change.)

(E) A stipulation that **CPS [PSFC]** must directly supervise a referred child's foster-care placement until the child is placed in a **legal risk or** an adoptive home, unless the child is in a foster home supervised by the contractor or another child-placing agency.

(F) A stipulation that **CPS [PSFC]** will continue to list every child whom **CPS [PSFC]** refers to the contractor on the Texas Adoption Resource Exchange (TARE), unless a home has already been found for the child at the time of the referral.

(G) A stipulation that **CPS's [PSFC's]** referral of a child to the contractor does not constitute an assurance that the child will be placed with a particular family.

(H) A stipulation that, if **CPS [PSFC]** finds a family to adopt a child before the contractor does, **CPS [PSFC]** may withdraw the referral to the contractor and proceed with the available placement.

(2) Recruitment.

(A) A description of the contractor's plan for recruiting **legal risk and** adoptive families for the children **CPS [PSFC]** refers to the contractor.

(B) A stipulation that **CPS [PSFC]** must give the contractor recruiting information about each referred child to help the contractor find a **legal risk or** an adoptive family for that child.

(C) A stipulation that **CPS [PSFC]** must advise the contractor of each child's other referrals (if any) to child-placing agencies.

(3) Home study.

(A) (No change.)

(B) A stipulation that the contractor must not place a referred child with a **legal risk or** an adoptive family until:

(i) (No change.)

(ii) **CPS [PSFC]** has approved the placement.

(4) Placement services.

(A) A stipulation that **CPS [PSFC]** will:

(i)-(ii) (No change.)

(iii) prepare the child's records for presentation to the **legal risk or** adoptive parents, as specified in **CPS's [PSFC's]** policies and procedures for adoption services.

(B) A specification of the contractor and **CPS [PSFC]** staff positions involved in reviewing and approving placements.

(C) A stipulation that **CPS [PSFC]** must give the contractor a complete copy of each referred child's case record, including all legal documents pertinent to the child's adoption.

(i) Under the Texas Family Code, §162.005 and §162.018, before presenting any of a child's records to the child's **legal risk or** adoptive parents or other parties authorized to see them, **CPS [PSFC]** (or the contractor) must delete all information that might identify the child's biological parents or anyone else whose identity must be kept confidential.

(ii) To this end, as specified in §700.1343 of this title (relating to Deleting Confidential Information Before Releasing a Child's Records to Authorized Parties), **CPS [PSFC]** deletes all

such identifying information from the records that the contractor will present to the **legal risk or** adoptive parents.

(D) A stipulation that the contractor will:

(i) first secure **CPS's** [PSFC's] written approval to present the records specified in **CPS's** [PSFC's] policies and procedures for adoption services to a referred child's prospective **legal risk or** adoptive parents; and

(ii) (No change.)

(E) A stipulation that **CPS** [PSFC] must allow the contractor to meet with a child and the child's caregivers before the child is placed for **legal risk placement or** adoption.

(F) A stipulation that the contractor must prepare a child and the child's prospective **legal risk or** adoptive parents for a placement as specified in **CPS's** [PSFC's] policies and procedures for adoption services. The preparation must include:

(i) an initial meeting between the child and the **legal risk or** adoptive family;

(ii) at least one overnight visit to the adoptive family's home (unless **CPS** [PSFC] **approves an exception**). **If a legal risk family is selected, the overnight visit is not required; and**

(iii) (No change.)

(G) A stipulation that the contractor must complete each referred child's placement as specified **CPS's** [PSFC's] policies and procedures for adoption services.

(H) A stipulation that the contractor must:

(i) inform a referred child's **legal risk or** adoptive parents about the availability of adoption assistance;

(ii) (No change.)

(iii) cooperate with **CPS** [PSFC] in processing adoption-assistance payments.

(I) An agreement that **CPS** [PSFC] and the contractor will collaborate in handling placement requests under the Interstate Compact on the Placement of Children.

(5) Postplacement services.

(A) A stipulation that the contractor must establish a **legal risk or** an adoption service plan and provide support services as specified in **CPS's** [PSFC's] policies and procedures for adoption services until the **legal risk placement becomes an adoptive placement and the** adoption is consummated. (Note: If an adoption is not consummated within a year after the initial placement, **CPS** [PSFC] and the contractor must review the placement and establish a new adoption service plan with realistic deadlines for achieving the objectives that must be achieved to consummate the adoption.)

(B)-(C) (No change.)

(D) A stipulation that the contractor must:

(i) (No change.)

(ii) give **CPS** [PSFC] written reports on the placement at least every two months, until the adoption is consummated. (Note: The contractor may send reports more frequently and may supplement the reports with telephone calls and letters.)

(E) A stipulation that the contractor will help each child's **legal risk or** adoptive parents and the parents' attorney consummate the adoption, as specified in **CPS's** [PSFC's] policies and procedures for adoption services. (Note: The contractor must prepare the social study required by the court unless the court orders another party to prepare it.)

(F) A stipulation that **CPS** [PSFC] must provide written consent to an adoption whenever:

(i) **CPS** [PSFC] and the contractor agree that the adoption is in the child's best interest and should be consummated; and

(ii) the contractor has:

(I) (No change.)

(II) sent **CPS** [PSFC] at least three written reports about it.

(G) A stipulation that the contractor must give **CPS** [PSFC] copies of:

(i)-(ii) (No change.)

(H) A stipulation that, if an adoptive placement is disrupted, the contractor must work with **CPS** [PSFC] to plan another placement for the child. The planning must include:

(i) a review of the child's permanency-planning goal as specified in **CPS's** [PSFC's] policies and procedures for permanency planning;

(ii) a review of other available **legal risk or** adoptive homes; and

(iii) a new specification of the contractor and **CPS** [PSFC] staff positions that will be involved in reviewing and approving the child's next placement if adoption remains the child's permanency planning goal.

(I) (No change.)

(6) Postadoption services. A stipulation that the contractor must provide **information about the TDPRS post-adoption program and services available prior to** [services after] an adoption **being** [is] consummated . **If** [if] the adoptive family needs additional services to support the adoption, **the** [. The] contractor must [:] **help the family find other sources of support and services. If the family returns for case record information, the contractor must assist the family and/or adult adoptee in obtaining this information whether the purpose is for background HSEGH, searching, or specific background details entitled to the person pursuant to the Texas Family Code.**

[(A) give the family all the support the contractor can afford to provide; and]

[(B) help the family find other sources of support.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712909

C. Ed Davis

Deputy Director, Legal Services

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 6. State Infrastructure Bank

Subchapter A. General Provisions

43 TAC §§6.1–6.4

(Editor's note: The Texas Department of Transportation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Department of Transportation proposes new Chapter 6, §§6.1-6.4, 6.11, 6.12, 6.21-6.24, 6.31, 6.32, and 6.41-6.46, concerning a state infrastructure bank. These actions are necessary to conform with statutory changes and are simultaneously being adopted on an emergency basis.

Section 350 of the Federal National Highway System Designation Act of 1995 (Public Law Number 104-59) provides that federal funds are available for the provision of financial assistance to eligible transportation projects through a state infrastructure bank. Senate Bill 370, 75th Legislature, 1997, enacted Transportation Code, Chapter 222, new Subchapter D to create a state infrastructure bank to provide financial assistance for urgently needed transportation systems.

Section 6.1 describes the purpose of the bank as defined by law.

Section 6.2 provides definitions for words and terms used in this chapter.

Section 6.3 describes general policies to provide the public with information which pertains to all activities of the bank. Subsections (a) through (f) restate provisions of law and are included to emphasize requirements which cannot be negotiated. Subsection (g) implements audit requirements of the federal regulations and further provides for prudent safeguards for the use of public funds.

Section 6.4 provides that projects which are complete or are in advanced stages of consideration by the department do not have to incur additional costs or time delays because of the adoption of these rules.

Section 6.11 provides that applicants must be legally authorized to construct, maintain, or finance eligible projects.

Section 6.12 implements the provisions of law by defining projects that are eligible for consideration.

Section 6.21 states that the executive director may assist potential applicants in developing an application provided the department is authorized by state law to do so.

Section 6.22 provides that all requests for financial assistance will be made in a form which allows comparison regardless of the type of assistance requested. Comparability will aid in approving or rejecting projects and in prioritizing projects should the demand for assistance exceed the bank's ability to provide assistance.

Section 6.23 provides that applicants must submit basic information in an application to describe the project and requested financial assistance. Supplemental information and data are also required to more fully describe the project and to provide information regarding financial feasibility, project impacts, and commitments and approvals. An exception is provided to avoid unduly burdening applicants with new study requirements when the project is in the Unified Transportation Program's Priority 1 or Priority 2 designations. Also to avoid undue burdens, irrelevant requirements may be waived. To provide complete information, additional explanations and expansions of information or data may be required.

Section 6.24 provides that the commission may suspend and subsequently restart the taking of applications should the bank's operation or financial condition need such action. This is intended to avoid applicants incurring the costs of studies and application preparation when the bank is unable to promptly consider offering financial aid.

Section 6.31 provides that applicants will be notified when an application is complete. The executive director will analyze the information presented and submit findings and recommendations for the application to the commission for further consideration.

Section 6.32 explains that all completed applications will be submitted to the commission for consideration. The commission may grant preliminary approval if the project and applicant are likely to have sufficient revenues to repay the financial assistance, the project is consistent with various transportation plans, and meets applicable requirements for social, economic and environmental impact studies. Preliminary approval authorizes the executive director to negotiate an appropriate agreement with the applicant regarding the project and financial assistance. Preliminary approval of an agreement to provide financial assistance may be made so long as it does not authorize final approval and construction of the project.

Final approval of a project and its construction may be made only after completion and approval of all required social, economic and environmental studies. The commission may postpone action on an application if warranted by the bank's financial condition. The commission may make both preliminary and final approval contingent on the applicant meeting requirements or performing acts. Preliminary approval, final approval, or disapproval must be made by written commission order and include rationale, findings and conclusions.

Section 6.41 provides that the executive director will negotiate agreements. Specific guidance on the anticipated nature of these agreements is provided. However, the executive director may choose to not include terms given in the subchapter and may include terms that are not in the subchapter depending on the nature of each individual project.

Section 6.42 provides that the department may perform all or part of the work for a project. If performed, the work will be performed in the normal course of business with financial aid provided as required. The applicant will be liable for repayment of principal, interest and any fees from the date the financial aid is provided. In order to allow the department to work on the project in the most efficient and economic manner, applicants may not contest the department's decisions. The applicant will provide rights of entry and otherwise assist in the pursuit of the work.

The section also provides that the department may allow the applicant to conduct all or part of the work. If so conducted, additional provisions are required to avoid jeopardizing the department's revenues from federal reimbursements. Should an applicant charged with conducting the work fail to comply with requirements, then the applicant will reimburse the department for the loss of any federal funds. To ensure that federal requirements are met, requests for approvals will be routed through normal departmental channels.

Section 6.43 provides that the department may require adherence to applicable standards in order to ensure that federal requirements are met.

Section 6.44 provides that the department may require the use of maintenance standards when needed to protect security interests in a project or asset and to protect the public's safety. The section also provides that applicants shall set any applicable speed limits as prescribed by state law in order to meet the department's duty to provide for the public safety.

Section 6.45 provides that traditional terms covering the loan of financial assistance, repayment and security will be included.

Section 6.46 provides notice to the public and applicants that additional terms and conditions may be included as the executive director may require.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five years the new chapter is in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the proposed sections. Although there will be costs for applicants to comply with the proposed regulations, the application process is voluntary and benefits of financial assistance are expected to greatly exceed any costs.

Mr. Smith has certified that there will be no significant negative impact on local economies or overall employment as a result of enforcing or administering the proposed chapter.

Mr. Smith also has determined that for each year of the first five years the chapter is in effect the public benefit anticipated as a result of implementing these sections will be the acceleration of transportation projects, and more efficient and effective transportation systems for the people of Texas. There will be no effect on small businesses.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new chapter. The public hearing will be held at 9:00 a.m. on October 28, 1997, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th

Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director, Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

Written comments on the proposed new chapter may be submitted to Frank J. Smith, Director, Budget and Finance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78763-5051. The deadline for receipt of comments will be 5:00 p.m. on November 18, 1997.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

The new sections do not affect other statutes, articles or codes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712746

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-8630

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Subchapter B. Eligibility

43 TAC §6.11, §6.12

(Editor's note: The Texas Department of Transportation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The new chapter is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712748

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-8630

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Subchapter C. Procedures

43 TAC §§6.21–6.24

(Editor's note: The Texas Department of Transportation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The new chapter is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712750

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-8630

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Subchapter D. Department and Commission Action

43 TAC §§6.31, §6.32

(Editor's note: The Texas Department of Transportation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The new chapter is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712752

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 10, 1997

For further information, please call: (512) 463-8630

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Subchapter E. Financial Assistance Agreements

43 TAC §§6.41–6.46

(Editor's note: The Texas Department of Transportation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The new chapter is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the bank.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712754

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 4. Automobile Theft Prevention Authority

1 TAC §4.36

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the Office of the Governor has been automatically withdrawn. The amended section as proposed appeared in the March 18, 1997, issue of the *Texas Register* (22 TexReg 2839).

Issued in Austin, Texas, on October 3, 1997.

TRD-9713144



TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 105. Rules of Practice in Contested Cases

7 TAC §105.20, §105.21

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new sections, submitted by the State Securities Board have been automatically withdrawn. The new sections as proposed appeared in the April 1, 1997, issue of the *Texas Register* (22 TexReg 3184).

Issued in Austin, Texas, on October 3, 1997.

TRD-9713148



Chapter 109. Transactions Exempt from Registration

7 TAC §109.3

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the State Securities Board has been automatically withdrawn. The

amended section as proposed appeared in the April 1, 1997, issue of the *Texas Register* (22 TexReg 3185).

Issued in Austin, Texas, on October 3, 1997.

TRD-9713149



TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 80. Manufactured Housing Standards and Requirements

10 TAC §80.50

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new section, submitted by the Texas Department of Housing and Community Affairs has been automatically withdrawn. The new section as proposed appeared in the March 18, 1997, issue of the *Texas Register* (22 TexReg 2840).

Issued in Austin, Texas, on October 3, 1997.

TRD-9713145



TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 321. Pari-mutual Wagering

Subchapter C. Simulcast Wagering

Simulcasting at Horse Racetracks

16 TAC §321.233

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the Texas Racing Commission has been automatically withdrawn. The amended section as proposed appeared in the March 18, 1997, issue of the *Texas Register* (22 TexReg 2847).

Issued in Austin, Texas, on October 3, 1997.

TRD-9713146

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Anesthesia and Anesthetic Agents

22 TAC §109.172

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption the proposed amendment §109.172, which appeared in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7450).

Issued in Austin, Texas, on September 29, 1997.

TRD-9712872

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

Effective date: September 29, 1997

For further information, please call: (512) 463-6400

◆ ◆ ◆
22 TAC §107.173

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption the proposed amendment §107.173, which appeared in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7450).

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TRD-9712873

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400

◆ ◆ ◆
22 TAC §107.174

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption the proposed amendment §107.174, which appeared in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7450).

Issued in Austin, Texas, on September 29, 1997.

TRD-9712874

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

Effective date: September 29, 1997

For further information, please call: (512) 463-6400

◆ ◆ ◆
22 TAC §107.175

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption the proposed amendment §107.175, which appeared in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7452).

Issued in Austin, Texas, on September 29, 1997.

TRD-9712875

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

Effective date: September 29, 1997

For further information, please call: (512) 463-6400

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter A. Advisory Committees

25 TAC §401.9

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn. The amended section as proposed appeared in the December 13, 1996, issue of the *Texas Register* (21 TexReg 11935).

Issued in Austin, Texas, on October 3, 1997.

TRD-9713147

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 74. Curriculum Requirements

Due to a technical error, §74.13 was inadvertently omitted from the October 3, 1997, issue of the Texas Register (22 TexReg 9891). The rule will become effective October 13, 1997. For clarification we are publishing the entire rule as submitted.

The Texas Education Agency (TEA) adopts amendments to §74.3 and §§74.11-74.13, concerning curriculum requirements, with changes to the proposed text as published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7118). The sections establish definitions, requirements, and procedures related to required curriculum and graduation requirements.

The adopted amendments would provide school districts the option of offering the technology applications courses in the recently adopted 19 TAC Chapter 126, Texas Essential Knowledge and Skills (TEKS) for Technology Applications, beginning in the 1997-1998 school year for state high school graduation credit. The adopted amendments will align the graduation requirements with the Texas essential knowledge and skills. All students entering Grade 9 during the 1997-1998 school year must have one technology applications graduation credit. In addition to the technology applications courses, courses from 19 TAC Chapter 120, TEKS for Business Education, and 19 TAC Chapter 123, TEKS for Technology Education/Industrial Technology Education, are also to receive state high school technology applications graduation credit. The adopted amendments would revise the technology applications graduation requirement under the minimum, recommended, and distinguished achievement graduation plans.

Under Senate Bill 1, a rule adopted by the State Board of Education (SBOE) normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The SBOE, by an affirmative vote of two-thirds of the board members, proposes an earlier effective date for the adopted amendments. The earlier date would allow schools to begin offering these courses in the 1997-1998 school year on a voluntary basis.

The following changes have been made since the section was proposed.

In §74.3(b)(2)(K)(iii)-(v), language has been amended to indicate that graduation credit for Computer Mathematics will be phased out on August 31, 1998, rather than August 31, 1999. In July 1997, the State Board of Education adopted the TEKS for mathematics with an implementation date of September 1, 1998. This change was also made in §§74.11(d)(10)(C)-(E), 74.12(b)(10)(C)-(E), and 74.13(a)(1)(J)(iii)-(v).

The following public comments have been received since the sections were proposed.

General Comments.

An individual and a representative of the Association of Texas Technology Education commented in support of several technology education courses listed from which students may select for state high school technology applications credit.

Agency Response. The agency agrees with these comments.

Subchapter A. Required Curriculum

19 TAC §74.3

The amendment is adopted under the Texas Education Code (TEC), §28.002, which directs the SBOE to adopt rules related to essential knowledge and skills and required curricula, and §28.025, which directs the SBOE to adopt rules that determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under TEC, §28.002.

§74.3. Description of a Required Secondary Curriculum.

(a) (No change.)

(b) Secondary Grades 9-12.

(1) (No change.)

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A)-(J) (No change.)

(K) technology applications - one unit of credit selected from a variety of computer-related courses including:

(i) all courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(ii) the following courses in Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I and II, Busi-

ness Computer Programming, Telecommunications and Networking, and Business Image Management and Multimedia;

(iii) the following courses in Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communication Graphics (modular computer laboratory-based), and Computer Multimedia and Animation Technology; and

(iv) Business Computer Applications I and II, Business Computer Programming I and II, Computer Applications, Computer Science I and II, Microcomputer Applications, Business Information Processing, Industrial Technology Computer Applications, and Computer Mathematics as provided in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12) until August 31, 1998.

(L) (No change.)

(3) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712613

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-9701



Subchapter B. Graduation Requirements

19 TAC §§74.11-74.13

The amendments are adopted under the Texas Education Code (TEC), §28.002, which directs the SBOE to adopt rules related to essential knowledge and skills and required curricula, and §28.025, which directs the SBOE to adopt rules that determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under TEC, §28.002.

§74.11. *High School Graduation Requirements.*

(a)-(c) (No change.)

(d) A student must complete at least 22 credits to receive a minimum high school program diploma. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests). A student must demonstrate proficiency in the following.

(1)-(9) (No change.)

(10) Technology applications - one credit, which may be satisfied by:

(A) all courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(B) the following courses in Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communication Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) Business Computer Applications I or II, Business Computer Programming I or II, Computer Applications, Computer Science I or II, Microcomputer Applications, Business Information Processing, Industrial Technology Computer Applications, or Computer Mathematics as provided in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12) until August 31, 1998.

(11) (No change.)

(e)-(h) (No change.)

§74.12. *Recommended High School Program.*

(a) (No change.)

(b) Academic core components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate proficiency areas. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests). The student must demonstrate proficiency in the following.

(1)-(9) (No change.)

(10) Technology applications - one credit, which may be satisfied by:

(A) all courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(B) the following courses in Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communication Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) Computer Science I or II, Business Computer Applications I or II, Business Computer Programming I or II, Computer Applications, Microcomputer Applications, Business Information Processing, Industrial Technology Computer Applications, or Computer Mathematics as provided in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12) until August 31, 1998.

(11) (No change.)

(c)-(d) (No change.)

§74.13. Distinguished Achievement Program – Advanced High School Program.

(a) Beginning in the 1999-2000 school year, a student who wishes to complete an advanced high school program (called the distinguished achievement program) and have the accomplishment recognized and distinguished on the academic achievement record (transcript) must complete the following requirements.

(1) Academic core components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate proficiency areas. The student must demonstrate proficiency in the following.

(A)-(I) (No change.)

(J) Technology applications - one credit, which may be satisfied by:

(i) all courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(ii) the following courses in Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(iii) the following courses in Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communication Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(iv) Computer Science I or II, Business Computer Applications I or II, Business Computer Programming I or II, Computer Applications, Microcomputer Applications, Business Information Processing, Industrial Technology Computer Applications, or Computer Mathematics as provided in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12) until August 31, 1998.

(K) (No change.)

(2)-(4) (No change.)

(b)-(g) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712614

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-9701



TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 101. Dental Licensure

22 TAC §101.8

The State Board of Dental Examiners adopts new §101.8, concerning persons with criminal backgrounds without changes to proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7446).

The new rule §101.8 establishes the guidelines the SBDE will follow when considering whether a criminal history will affect either an applicant's initial request for licensure or an individual's status as a licensed practitioner.

The new rule §101.8 incorporates the provisions of Article 6252-13(c) which provides that persons with criminal backgrounds may obtain or retain a professional license if the criminal activity does not directly relate to the duties and responsibilities of the profession. The rule provides a list of offenses the Board has determined relate to an individual's fitness for licensure by the Board. Conviction of any felony involving fraud, dishonesty, or deceit will render an individual ineligible to obtain or retain licensed status. The relationship between a dentist or hygienist and a patient is one based on trust and the professional must be trustworthy and honest; conviction of such crimes is proof that an individual is dishonest and/or lacking in trustworthiness. Also, convictions of any crimes involving failure to adhere to statutes regulating dentistry or dental hygiene is proof that an individual knowingly, or with disregard for the interest of persons seeking dental care, has violated applicable law or rules. The remainder of the violations listed are crimes of such a serious nature that an individual convicted of one or more of them has demonstrated that he or she is either unmindful of, or exhibits disregard for the basic tenets of behavior reflected in the "social contract" that can be said to exist in a civilized society. Licensed professionals hold positions of trust in a society and reasonably should be expected to conduct themselves in keeping with its basic tenets. Conviction of any of the other listed crimes does not mean automatic ineligibility to obtain or retain a license; the Board, pursuant to rule 101.8 section (e), may consider the factors described therein and allow licensure.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; Article 4545 which provides that the State Board of Dental Examiners may adopt rules relating to licensure requirements for dentists; and Texas Civil Statutes, Article 6252-13(c), which addresses licensure of professionals with criminal histories.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712866

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

Effective date: October 20, 1997

Proposal publication date: August 12, 1997
For further information, please call: (512) 463-6400



Chapter 102. Fees

22 TAC §102.1

The State Board of Dental Examiners adopts amendment to §102.1, concerning licensing and examination fees without changes to proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7447).

The amended rule §102.1 ensures (1) that the State Board of Dental Examiners will have sufficient revenue to cover additional costs of staff increases authorized by the Legislature and resources to enforce the Dental Practice Act and (2) that the peer assistance program will have a guaranteed revenue to assure assistance for professionals impaired by chemical dependency or mental illness.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4551(b) which provides that the State Board of Dental Examiners shall establish reasonable and necessary fees to cover the cost of administering the Dental Practice Act; Health and Safety Code §467.0041, which provides that the State Board of Dental Examiners may impose a surcharge of not more than \$10.00 to a license renewal fee for dentists; and HB 1, General Appropriations Act, 75th Legislature, Regular Session, Article VIII.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712867

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



Chapter 109. Conduct

22 TAC §109.109

The State Board of Dental Examiners adopts new §109.109, concerning advertising non ADA specialties with changes to the proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7448).

The new rule establishes a method to allow dentists who have achieved certain professional status to exercise their first amendment rights of free speech to inform the public of their status in a manner that is not false and misleading while

ensuring that the public will be fully informed regarding the nature of the professional training and expertise of the dentists. Changes from published for comment version of the rule are made to correct typographical errors to add the words " 'fellow' if the following disclaimer appears in a reasonably clear and visible manner."

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§109.109. Advertising non ADA Specialties

A dentist may announce in any means of communication with patients or the general public; attainment of a fellowship or certification as a diplomate only if the dentist has successfully completed the qualifying examination of the appropriate certifying board of one or more of the specialties recognized by the "American Dental Association", except that a licensed dentist who has been granted diplomate or fellow status by a bona fide national organization which is not recognized as a certifying board by the American Dental Association, but grants diplomate or fellow status based upon the dentist's postgraduate education, training, experience and an oral and written examination based upon psychometric principles, may use the terms "diplomate", "fellow", or "associate fellow" if the following disclaimer appears in a reasonably clear and visible manner compared to the announcement of the status "the (insert the name of organization granting diplomate status) is not recognized as a specialty board by the American Dental Association."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712868

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

Effective date: October 20, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 463-6400



Chapter 114. Extension of Duties of Auxiliary Personnel Dental Assistants

22 TAC §114.2

The State Board of Dental Examiners adopts new rule §114.2, concerning definitions without changes to proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7458).

The new rule communicates unambiguously that certain procedures performed with dental lasers are irreversible and may not be performed by dental assistants. Dentists may not delegate tasks to dental assistants if the results of the task cannot be reversed and this includes cutting procedures. The Board is of the opinion that lasers, whether used as surgical instruments

or as activators for whitening chemicals, have the potential to produce irreversible results and until such time as lasers are shown conclusively to have no such potential, dental assistants may not perform such procedures.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act and Article 4551e and 4551e-1 which provide that the State Board of Dental Examiners may adopt rules relating to the practice of dental hygiene and employment of dental assistants.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712869

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

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Proposal publication date: August 12, 1997

For further information, please call: (512) 463-6400



Chapter 115. Extension of Duties of Auxiliary Personnel Dental Hygiene

22 TAC §115.1

The State Board of Dental Examiners adopts amendments to §115.1, concerning definitions without changes to the proposed text as published in the August 11, 1997, issue of the *Texas Register* (22 TexReg 7458).

The amendments to §115.1 communicate unambiguously that certain procedures performed with dental lasers are irreversible and may not be performed by dental hygienists. Dentists may not delegate tasks to dental hygienists if the results of the task cannot be reversed, and this includes cutting procedures. The Board is of the opinion that lasers, whether used as surgical instruments or as activators for whitening chemicals, have the potential to produce irreversible results and until such time as they are shown conclusively to have no such potential, dental hygienists may not perform such procedures.

The Dental Hygiene Advisory Committee during its September 19 meeting commented in favor of adoption of the rule.

The amended rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 § and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4551e and 4551e-1 which provide that the State Board of Dental Examiners may adopt rules relating to the practice of dental hygiene and employment of dental assistants.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712870

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

Effective date: October 20, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 463-6400



22 TAC §115.4

The State Board of Dental Examiners adopts new rule §115.4, concerning placement of site specific subgingival medicaments without changes to proposed text as published in the August 12, 1997, issue of the *Texas Register* (22TexReg7459).

The new rule §115.4 will provide that a dental hygienist who has been trained appropriately as determined by the employing dentist may place certain subgingival medicaments under the direct supervision of a licensed dentist. This rule was proposed to the Board by the Dental Hygiene Advisory Committee and the Board has approved it as proposed.

The Dental Hygiene Advisory Committee at its September 19 meeting commented in favor of adoption of the rule.

The new rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4551e which provide that the State Board of Dental Examiners may adopt rules relating to the practice of dental hygiene.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9712871

Douglas A. Beran, Ph.D

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



Part XXIII. Texas Real Estate Commission

Chapter 537. Professional Agreements and Standard Contracts

Standard Contract Forms

22 TAC §§537.11, 537.20, 537.28-537.32, 537.37, 537.38

The Texas Real Estate Commission (TREC) adopts amendments to §§537.11, 537.20, 537.28-537.32, 537.37 and 535.38, concerning standard contract forms, without changes to the proposed text as published in the March 28, 1997, issue of the *Texas Register* (22 TexReg 3077).

The amendment to §537.11 adds eight revised forms to the list of standard contract forms developed by the Texas Real Estate Broker-Lawyer Committee and promulgated by the commission. Two previously promulgated addendum forms have been deleted from the list, because the sections adopting those forms by reference have been repealed.

The eight revised forms are TREC Number 9-3, Unimproved Residential Property Contract; TREC Number 20-3, One-to-Four Family Residential Contract (Resale) All Cash, Assumption, Third-Party Conventional or Seller Financing; TREC Number 21-3, One-to-Four Family Residential Contract (Resale) FHA Insured or VA Guaranteed Financing; TREC Number 23-2, New Home Contract (Incomplete Construction); TREC Number 24-2, New Home Contract (Completed Construction); TREC Number 25-2, Farm and Ranch Contract; TREC Number 30-1, Residential Condominium Contract (Resale) All Cash, Assumption, Third-Party Conventional or Seller Financing; and TREC Number 35-1, Residential Condominium Contract (Resale) FHA Insured or VA Guaranteed Financing. The two forms being deleted from the list of promulgated forms are TREC Number 2-4, Property Condition Addendum, and TREC Number 27-0, Addendum for Inspection with Right to Terminate.

The amendment to §537.20 adopts by reference form TREC Number 9-3, Unimproved Property Contract, replacing form TREC Number 9-2. The amendment to §537.28 adopts by reference form TREC Number 20-3, replacing form TREC Number 20-2. The amendment to §537.29 adopts by reference form TREC Number 21-3, replacing form TREC Number 21-2. The amendment to §537.30 adopts by reference form TREC Number 23-2, replacing form TREC Number 23-1. The amendment to §537.31 adopts by reference form TREC Number 24-2, replacing form TREC Number 24-1. The amendment to §537.32 adopts by reference form TREC Number 25-2, replacing form TREC Number 25-1. The amendment to §537.37 adopts by reference form TREC Number 30-1, replacing form TREC Number 30-0. The amendment to §537.38 adopts by reference form TREC Number 31-1, replacing form TREC Number 31-0.

Comments generally in support of the adoption of the forms but suggesting changes to the text were received from the Abilene Board of Realtors, Amarillo Association of Realtors, Collin County Association of Realtors, Greater Tyler Association of Realtors, Lubbock Association of Realtors, Texas Association of Builders, Texas Association of Realtors, Texas Land Title Association, Texas Real Estate Inspector Committee, Texas Real Estate Teachers Association, and the Waco Association of Realtors. More than 275 comments were received on the proposed contract forms from real estate licensees, attorneys, inspectors and members of the general public. Most comments concerned the provisions of the contract forms addressing property included in the sale, financing, payment for title insurance and survey, inspections and repairs to the property, payment of the broker's fee, mediation, recovery of attorney fees and commission agreements between brokers. The Texas Real Estate Broker-Lawyer Committee met four times between

May 1, 1997, and September 1, 1997, to evaluate comments and to submit revised versions of the contract forms to the commission for consideration. The commission considered comments and discussed the forms at public meetings on April 28, 1997, June 16, 1997, and July 24, 1997, and requested the Texas Real Estate Broker-Lawyer Committee to consider revisions to the forms suggested by public comments.

As a result of comments received, changes were made in the proposed text of most of the forms. The stove was added to the list of property included in the sale, the loan sought by the buyer was restated as a specific loan to value ratio, payment for the survey was made an expense which could be paid by either party, a notice was provided about the availability of residential service contracts ("home warranties"), the buyer was given the right to inspect the property, a choice was provided for the parties to apply an option fee to the sales price, language limiting the representations and warranties of the seller was removed, neither party was made responsible for lender required repairs in absence of a written agreement to the contrary, a provision was added permitting the buyer to terminate the contract if lender required repairs exceeded five percent of the sales price, proration language was made consistent in the forms, agreements for mediation would be created by an addendum, nonparties such as brokers and the escrow agent would be entitled to recover attorney fees in connection with any legal proceedings brought under or with respect to the transaction and provisions were added relating to an agreement between brokers for payment of a fee. In the contract form for farm and ranch sales, language was added to facilitate use of an addendum if the parties desired to use an abstract of title in lieu of a title insurance policy.

The commission determined that it was not appropriate to make a number of changes sought by commenters. The forms were not changed to require the seller to pay for the owner's policy of title insurance because either party may pay that expense. A provision obligating the seller to make repairs up to a stated amount was not provided, because the parties could insert such a provision directly in the space provided for special provisions. The buyer's option, for a separate consideration, to terminate the contract was not removed because to do so would require continued use of a TREC addendum containing the same language. Provisions providing for payment by the seller of a specific fee to the listing broker or brief leasing of the property were not added, because separate agreements or leases would provide more comprehensive agreements.

Adoption of the amended sections is necessary to update and standardize the forms used by real estate licensees in negotiating real estate sales.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §16(e), which authorize the Texas Real Estate Commission to adopt rules requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712809
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: January 1, 1998
Proposal publication date: March 28, 1997
For further information, please call: (512) 465-3900

◆ ◆ ◆
22 TAC §§537.13, 537.34, 537.42

The Texas Real Estate Commission (TREC) adopts the repeals of §537.13 and §537.34, concerning standard contract forms, without changes to the proposed text as published in the March 28, 1997, issue of the *Texas Register* (22 TexReg 3079). Based on the comments received on the proposed repeal of §537.42, concerning the Agreement for Mediation, form TREC No. 35-0, the commission determined not to repeal §537.42.

Section 537.11 concerns the Property Condition Addendum, form TREC No. 2-4, a contract addendum providing for the inspection of a property for termites or for needed repairs. Section 537.34 concerns the Addendum for Inspection with Right to Terminate, form TREC No. 27-0, an addendum permitting the buyer, for a fee, to inspect the property with a right to terminate the contract within a stated period. These sections have been repealed because the addenda they adopted by reference have been incorporated into revised contract forms promulgated by the commission and are no longer needed as addenda.

No comments were received regarding the proposed repeal of §537.13 or §537.34. With regard to §537.42, several comments were received urging the commission to continue use of the Agreement for Mediation as an addendum rather than as part of the main contract form. Commenters suggested that the current practice of making the parties to the contract aware of the mediation process and providing an addendum for an agreement to mediate disputes was preferable to a contractual provision in which the parties in every transaction were required to choose whether to submit disputes to mediation. Based on the comments received, the commission determined not to repeal §537.42.

The repeals are adopted under Texas Civil Statutes, Article 6573a, §16(e), which authorize the Texas Real Estate Commission to adopt rules requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 26, 1997.

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◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter B. Interagency Agreements

25 TAC §§401.46, 401.55, 401.56

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeal of §§401.46, 401.55, and 401.56 of Chapter 401, Subchapter B, concerning Interagency Agreements, without changes to the text as proposed in the Tuesday, July 29, 1997, issue of the *Texas Register* (22 TexReg 7007).

The adoption of the repeals will result in a concise and relevant body of policy documents by eliminating unnecessary rules for which the statutory authority has been repealed.

Section 401.46 adopted by reference a memorandum of understanding (MOU) between the department and Texas Commission on Alcohol and Drug Abuse (TCADA), Texas Department of Health (TDH), Texas Department of Human Services (TDHS), Texas Department on Aging (TDoA), Texas Education Agency (TEA), Texas Rehabilitation Commission (TRC), and Texas State Board of Pharmacy (TSBP). The MOU addressed the coordination of reviews of community center programs for the mentally disabled and was authorized by former Texas Health and Safety Code, §534.034, which was repealed by House Bill 1734, 75th Legislature.

Section 401.55 adopted by reference an MOU between the department and TDHS concerning services not provided under the state ICF/MR program. The MOU was authorized by former Texas Health and Safety Code, §533.064, which was repealed by Acts 1995, 74th Legislature, ch. 821, §18, eff. Sept. 1, 1995.

Section 401.56 adopted by reference an MOU between the department and TDoA, TDHS, and TDHS concerning biennial revision and updating of the Texas Long-term Care Plan for the Elderly. The MOU was authorized by former Texas Human Resources Code, §101.031, which was repealed by Acts 1995, 74th Legislature, ch. 693, §23, eff. Sept. 1, 1995.

No written comments were submitted concerning the proposed repeals.

The repeals are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and with legislative actions which repealed Texas Health and Safety Code, §§534.034 and §533.064, and Texas Human Resources Code, §101.031.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712760

Ann Utley
Chairman
Texas Department of Mental Health and Mental Retardation
Effective date: October 15, 1997
Proposal publication date: July 29, 1997
For further information, please call: (512) 206-4516

Subchapter G. Community Mental Health and Mental Retardation Centers

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§401.441-401.456 of Chapter 401, Subchapter G, concerning community mental health and mental retardation centers. Sections 401.441-401.448, 401.450, 401.453, 401.455, and 401.456 are adopted with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 5988-5995). Sections 401.451, 401.452, and 401.454 are adopted without changes. Section 401.449 is adopted with changes to the proposed text as published in the July 18, 1997, issue of the *Texas Register* (22 TexReg 6726-6728). The repeals of existing §§401.451-401.463, 401.465, and 401.466, concerning the same, are contemporaneously adopted in this issue of the *Texas Register*.

The subchapter describes the requirements by which community mental health and mental retardation centers are established and operated by a local agency with a plan approved by the Texas MHMR Board. The plan is updated on a three-year cycle and subject to approval by the Texas MHMR Board. The plan is modified as necessary within the three-year cycle and subject to approval by the commissioner. With the exception of §401.449, the new sections limit the subchapter's content to requirements for establishing and operating a community center without regard to a center's designation as a local authority.

Section 401.449 describes the authority by which the department and community centers may contract for services; allows for the designation of a community center as a local authority and the contracting of services with the department; describes the circumstances for which the department may appoint a management team or individual to manage and operate a community center and the process for appealing the appointment; describes the functions a management team/individual may perform; and describes the responsibilities of the commissioner and the management team/individual.

The proposal has been modified upon adoption at the request of several commenters. Minor clarifying language has been added throughout the subchapter. New language has been added to the subchapter's application section for clarification. A definition of "local match" was added and the definitions of "community center," "local contribution" and "region" were modified for consistency with the subchapter's language or for clarification. Language referencing the Texas Health and Safety Code, §534.0015 was added to §401.444(a). Language in §401.444(b) regarding the department's encouragement and support of the affiliation of local agencies with *existing* community centers *and merging of smaller community centers* was modified.

Language regarding a specific criteria in §401.445(a)(2)(B) for reviewing a local agency's letter of intent was modified to address unique geographical or sparsely populated areas of the state. The requirement for a board of trustees to seek public input in the development of its initial plan was added to §401.445(c)(1). Language was added to §401.445(c)(2), §401.446(b), and §401.447(b) regarding department staff's authority to verify the information contained in the initial, updated, or modified plan. Language was added to §401.445(c) and §401.446 regarding the appeal process available to the board of trustees if the commissioner intends to recommend disapproval of its initial or updated plan to the Texas MHMR Board.

Language was added to §401.448(a) regarding information to be included in a center's dissolution plan. Language was modified or added to §401.449 clarifying the requirement for local match; clarifying the department's responsibility and purpose for appointing a management team or individual; granting centers the right to appeal the appointment of a management team/ individual; describing the type of appeal available; and describing the situation in which the appointment is not stayed pending outcome of the appeal. Language was deleted in the same section which identified or limited the source of funds used for paying the costs of the management team/ individual.

Language was added to §401.453 clarifying that the methods for determining salaries of community center employees described in the section was applicable to only those centers that do not contract with the department and that the method for determining salaries described in a contract between the department and a center supersedes the requirements in the section. Language was added to §401.454(1) (Exhibit A) requiring the involvement of "other interested citizens" in planning and policy development in addition to persons receiving services, family members, and advocacy organizations, including a description of their major issues of concern and how those issues were addressed. References were modified in §401.455 and clarifying language was added to §401.456.

Public comment was received from The Texas Council of Community Mental Health and Mental Retardation Centers, Austin; The Arc of Texas, Austin; Riceland Regional Mental Health Authority, Wharton; Parent Association for Retarded of Texas, Austin; and a parent of a state school resident.

One commenter suggested the definition of "local service area" be included in §401.449 since the term is not used elsewhere in the subchapter. The department responds that words and terms are defined in §401.443. The department notes that the term "local service area" is used in the definition of "local authority."

The same commenter suggested referencing the purpose and policy section (§534.0015) of the Texas Health and Safety Code in §401.444. The department responds by adding language to reflect the commenter's suggestion.

The commenter suggested deleting language in §401.444(b) which states that the department encourages and supports the affiliation of local agencies with *existing* community centers *and the merging of smaller community centers*. The commenter suggested the deletion because the language anticipates concepts addressed in HB 1734 (75th Legislature) that are yet to

be considered in accordance with the statute. The department responds by deleting the language as requested.

Regarding §401.445(c)(1)(C)(i), the commenter noted that the term "state-operated community services," in the absence of the use of capital letters or the acronym "SOCS," may be misunderstood. The department responds by adding the acronym "SOCS" for clarification.

Regarding §401.445(c)(1)(C)(ii), the same commenter suggested adding the phrase "including amount of local contribution, e.g., if the center desires to receive funding from the department." The commenter suggested the phrase to address the merging of two or more centers when a SOCS is not involved. The department responds by adding revised language which addresses the commenter's concern.

The commenter suggested adding language to §401.446(c)(1)-(2) clarifying that the certificate of recognition is an *updated* certificate. The department responds by adding language to reflect the commenter's suggestion.

Regarding §401.446(c)(3), the commenter stated that the last sentence should be deleted or revised because if the department is of the opinion that it can not revoke a center's certificate of recognition, then the sentence is in violation of the department's position when it states "the department no longer recognizes the entity as a community center." The statement is, in effect, a revocation. The commenter suggested adding a decertification section and stating in §401.446 that failure to timely submit requested updated material to the department is grounds for decertification. The commenter asked what happens if a center repeatedly or materially fails to perform and operate for the purposes and functions described in its current plan. The commenter stated that his organization takes the position that the department has the implicit authority to disapprove what it has the explicit authority to approve, i.e., the department has the authority to revoke a center's certificate of recognition and involuntarily dissolve the center because it has the authority to approve the plan for a center's establishment. The commenter suggested language describing a procedure for decertification which involved notices, responses, plan of correction, informal medication, and an administrative hearing conducted by the Board. The department agrees that the phrase "the department no longer recognizes the entity as a community center" is, in effect, a revocation. However, the department does not agree with the commenter's suggestion to create a separate process for decertifying a center. The department responds that it is able to revoke a center's certification through the updated or modified plan process. Section 401.446(a) requires a center to submit an updated plan on an assigned three-year cycle, *or as requested by the Texas MHMR Board, or as necessary*. Section 401.447(a) requires a center to submit a modification of its current plan as frequently as necessary to reflect material changes in the community center's local agencies, *functions*, or region. With these requirements and the addition of language in the plan's review process which permits verification of the information contained in the plan, the Board is able to disapprove a center's plan if it does not reflect the center's purposes and operation. This is, in effect, a revocation. Additionally, the department adds an appeal process for centers if disapproval of their initial or updated plan will be recommended to the Texas MHMR Board. The appeal process involves no-

tices, responses, and an administrative hearing "proposal for decision."

The same commenter suggested minor clarifying language to §401.447(a)(1)(A), (a)(2), (a)(2)(B). The department responds by adding the clarifying language as suggested.

The commenter suggested adding the term "purposes" to §401.447(a)(3) to comply with statute and §401.445(c)(4). The department responds that the purposes of a center, stated in Section II of Exhibit A (Charter To Be a Community Center), may not be expanded, reduced, or amended.

The same commenter suggested deleting §401.447(d) because it is redundant to §401.445(c)(4). The department responds that, although the language is redundant, it declines to delete it because §401.445 addresses the establishment of a *new center* while §401.447 addresses modifying the current plan of an *existing center*.

Regarding §401.448(a), the commenter suggested including the pluralization of local agency for clarification. The department responds by modifying the language to reflect the commenter's concern.

Regarding §401.448(a), the same commenter suggested adding a new (5) which states "the future plans for the region's service delivery system (e.g., affiliation with an existing center, establishment of a new center, reliance upon a SOCS). The department responds by adding the suggested language.

Regarding §401.450(b)(3), the commenter stated that, since §534.022 of the Texas Health and Safety Code applies only to purchases of property through a permissive bond issuance, the phrase "where applicable" should be added. The department responds that the statute applies to community centers interested in acquiring or refinancing the acquisition of real and personal property or to construct improvements to property and not specifically for purchases of property through a permissive bond issuance. The statute allows community centers to contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue, execute, refinance, or refund bonds, notes, or contracts.

Regarding §401.450(c)(3), the same commenter requested changing the term "conducted" to "administered" for consistency with state statute. The department responds by changing the language as requested.

Regarding §401.450(f), the commenter suggested changing the term "local funds" to the defined term "local contribution" for consistency. The department responds that the phrase "local funds required to match department funds" is from statute (§534.021, Texas Health and Safety Code) and means local match. Local match is that which a local authority is required to contribute to match department funds per a performance contract. Local contribution is that which each local agency contributes to the *community center*, regardless of whether the center is a local authority. If the community center is also the local authority, then the local match requirement is met using the local contribution. The statute applies to those community centers that are local authorities or that receive department funds. For clarification, a definition for "local match" has been added and language throughout the rule has been modified to

include the term as appropriate. Additionally, the definition of "local contribution" has been modified.

The same commenter suggested deleting §401.451 because centers must comply with the Civil Rights Act and the Americans with Disabilities Act whether or not it is stated in a department rule. The commenter stated that the requirement's applicability to "entities with which they contract" is confusing, because those entities will be required to comply in accordance with law, not by contract. The commenter also stated that any requirement of "entities with which they contract" should be placed in department rules governing contracts. The department responds that it is obligated to state such requirements pursuant to its civil rights methods of administration which were negotiated by the Texas Health and Human Services Commission with the United States Department of Health and Human Services regional Office of Civil Rights.

Regarding the development of the initial, updated, or modified plan and a center's decision to dissolve or merge with an existing center, another commenter suggested that the rule require the board of trustees to seek input (through some form of public process) from the broader stakeholder community. The commenter stated that any public input received should be summarized in written form and submitted to the department as an addendum to the initial, updated, or modified plan, or dissolution plan. The commenter also suggested requiring assistance from the center's mental health and mental retardation planning advisory councils in developing the updated and modified plans, and dissolution plan. Additionally, the commenter suggested providing an appeal process for a center if its initial, updated, or modified plan is not approved. The department responds by adding language requiring the board of trustees to seek input through a public process (e.g., public hearings, focus groups, town meetings) from the citizens in the proposed region regarding local needs and priorities. Also, in Section V of Exhibit A (Charter To Be a Community Center) language has been added regarding the involvement of "other interested citizens" in addition to persons receiving services, family members, and advocacy organizations in planning and policy development, including a description of their major issues of concern and how those issues were addressed. Regarding assistance from the center's mental health and mental retardation planning advisory councils in developing the updated and modified plans, and dissolution plan, the department responds that, with the exception of the development of the initial plan, requiring input from mental health and mental retardation planning advisory councils is a local authority planning function. However, the department notes that any initial, updated, or modified plan must state the involvement of persons receiving services, family members, advocacy organizations, and other interested citizens in planning and policy development. Regarding providing an appeal process for a center if its initial, updated, or modified plan is not approved, the department responds by adding an appeal process for a center if the commissioner intends to recommend disapproval of a center's initial or updated plan to the Texas MHMR Board.

Two commenters requested that language be added clarifying that state school services are included in the "comprehensive array of mental health and mental retardation services" (§401.445(a)(2)(C)), the "range of environments in which those services may be delivered" (§401.450(c)(1)(C)), and "effective

system of comprehensive community-based mental health and mental retardation service programs" (Section IV of Exhibit A). The commenters provided documentation of Commissioner Don Gilbert's statement of his perspective on the role of the mental retardation authority as being the "front door" or "conduit" for entry into the TDMHMR system. Regarding Section II of Exhibit A, the commenters expressed appreciation for the acknowledgment that community placement may not always be appropriate and feasible and requested adding a statement regarding the support and respect for a person's right to choose. The department responds that this subchapter's content is limited to requirements for establishing and operating a community center without regard to a center's designation as a local authority. The commenters' issues pertain to an entity's designation as a local authority, not an entity's existence as a community center. The department notes that it is developing draft rules governing local authorities which will include language that addresses the commenters' concerns.

Regarding §401.449, one commenter stated that the appointment of a management team to correct a contractual issue is an overall approach which oversteps the contractual rights of the department. The commenter requested that an approach be explored that will allow control of departmental funds and obligations without interfering with the center's operations outside of that sphere. The commenter also requested the review of the department's legal authority to appoint a management team/individual who will suspend the responsibility of and management by a board of trustees that was appointed by an independent unit of local government. The commenter expressed concern about the department's legal authority regarding §401.449(b)(3)(B), (b)(3)(C), (b)(3)(E), (b)(3)(G), (b)(5), (b)(7), and (b)(10). The department understands the seriousness of the appointment of a management team/individual and assures the commenter that an appointment would be considered only when the continuation of the contract was in jeopardy – meaning this action would be taken only if, after repeated efforts by the department to ensure that problems were corrected, contract termination was the only other option. The department notes the Appropriations Act, Article II, §38, states that if the department determines a community center is *unable or unwilling to fulfill its contractual obligations to provide services or to exercise adequate control over expenditures and assets*, the department may take necessary steps, including the appointment of a management team, *to protect the funds appropriated under the Act and ensure the continued provision of services*. The department's goals in appointing a management team/individual are the continued provision of quality services and the prudent use of state funds. The proposed functions listed in §401.449(b)(3) that a management team/individual may perform are necessary to accomplish these goals. Regarding the department's legal authority to appoint a management team/individual who will suspend the responsibility of and management by a board of trustees that was appointed by an independent unit of local government, the department responds that its legal authority is stated in the Appropriations Act, Article II, §38. The language in §401.449(b) provides procedures for accomplishing what is permitted by this rider in the Appropriations Act.

One commenter acknowledged that the language contained in §401.449(b) was taken from Senate Bill 940 (75th Legislature), which did not complete the legislative process before the end

of the session. The commenter requested that the department change and add language suggested by the commenter to achieve fidelity to the Legislature's intent and the commenter's agreements and understandings with the department. The commenter requested that language be added regarding a center's right to appeal the appointment of a management team/individual, the type of appeal available, and the situation in which the appointment is not stayed pending outcome of the appeal. The department responds by adding language as requested.

The same commenter requested that language be added to §401.449(b)(3) clarifying the functions that a management team/individual may perform. The department responds by adding language to §401.449(b)(1) regarding the department's responsibility, which is consistent with the Appropriations Act, Article II, §38.

The commenter requested that §401.449(b)(9) be revised to reflect the language in Senate Bill 940. The department responds by revising the language as requested.

The same commenter requested language in §401.449(b)(10) be revised to state that all costs of the management team/individual be paid by the center with funds available through the department's contract with the center. The commenter stated that the department does not have the authority to encumber funds belonging to the center through a contract or other agreement with other center funding sources. The department responds by deleting the language which identifies or limits the source of funds that may be used for payment.

25 TAC §§401.441–401.448, 401.450–401.456

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers and with the Texas Health and Safety Code, §534.001(e), which requires the Texas MHMR Board to adopt rules specifying the procedures for submitting, approving, and modifying a community center's plan.

§401.441. Purpose.

The purpose of this subchapter is to describe requirements by which community mental health and mental retardation centers are established and operated by a local agency with a plan approved by the Texas Mental Health and Mental Retardation Board in accordance with the Texas Health and Safety Code, §534.001(e).

§401.442. Application.

This subchapter applies to local agencies desiring to establish a new community mental health and mental retardation center or affiliate with an existing center and to all existing community mental health and mental retardation centers established under the Texas Health and Safety Code, Title 7, Chapter 534.

§401.443. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Board of trustees - A body of not less than five nor more than nine persons selected and appointed in accordance with Texas Health and Safety Code, Title 7, §534.002 or §534.003, and §534.004, §534.005, and §534.0065, which has responsibility for the effective administration of a community center.

Commissioner - The commissioner of the Texas Department of Mental Health and Mental Retardation.

Community center - A center established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

Current plan - The most recently approved initial, updated, or modified plan.

Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).

Facility - Any state hospital, state school, or state center.

Initial plan - The plan developed by a board of trustees to establish a new community center.

Local agency - A county, municipality, hospital district, school district, or any organizational combination of two or more of these which may establish and operate a community center.

Local contribution - Funds or in-kind contribution by each local agency to a community center in the amount approved by the department, which includes local match if the center is a local authority.

Local authority - An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.

Local match - In accordance with the Texas Health and Safety Code, §534.066, those funds or in-kind support from a local authority that are required to match some or all of the state funds the local authority receives pursuant to a contract with the department.

Local service area - A geographic area composed of one or more Texas counties delimiting the population which may receive services from a local authority.

Mental health services - All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons with a severe and persistent mental illness which may be accompanied by chemical dependency or mental retardation.

Mental retardation services - All services concerned with research, prevention, and detection of mental retardation and all services related to the education, training, habilitation, care, treatment, and supervision of persons with mental retardation, except the education of school-age persons that the public educational system is authorized to provide.

Region - The area within the boundaries of the local agencies participating in the operation of a community center established under the Texas Health and Safety Code, Chapter 534, Subchapter A.

State-operated community services (SOCS) - Community residential and nonresidential programs operated by the Texas Department of Mental Health and Mental Retardation.

§401.444. Philosophy.

(a) To realize the purpose and policy for community centers in Texas as described in the Texas Health and Safety Code, §534.0015, the provisions of this subchapter are intended to promote

an effective relationship between state and local government in the form of local boards of trustees of community centers; these provisions recognize the importance of local initiatives and control in the development and expansion of community services.

(b) The advantage for a local agency in forming a new community center or affiliating with an existing community center is the greater degree of local ownership and control of the services provided. The department recognizes the importance of local control vested in a community center. Therefore, the department encourages and supports the affiliation of local agencies with community centers. The following principles are important in the development of local services.

(1) Persons receiving services, as well as their families and friends, should have a prominent role in determining which services best meet their needs.

(2) Persons with mental illness or mental retardation should have the opportunity for integration into the activities and social fabric of the local community.

(3) Decisions by the board of trustees of a community center should be made openly with consideration of the view of those affected by its decisions.

(4) Local communities, persons receiving services and their families, community centers, and other service providers should work together to identify service delivery needs and plan a system that meets these needs.

(5) Mental health and mental retardation services are of the best value for the public funds expended.

§401.445. Process to Establish a New Community Center.

(a) Letter of intent. If a local agency decides to establish a new community center, then the local agency submits a letter of intent to the commissioner outlining the proposed new center's region, governing structure, and other information pertinent to the formation of the proposed new center.

(1) If the local agency submitting the letter of intent is not a county or counties, the letter must be accompanied by a letter of endorsement from the appropriate county judge or judges.

(2) The commissioner designates staff who are knowledgeable of community center operations to review the letter of intent using the following criteria:

(A) the rationale clearly supports the benefits of establishing a new center over affiliation with an existing center and the establishment of a new center is consistent with the department's mission for the development of community services in Texas;

(B) the population of the region of the proposed new center is at least 200,000 or large enough to support a center;

(C) comprehensive array of mental health and mental retardation services will be provided;

(D) the extent of the local contribution supports the intent; and

(E) providing services efficiently is financially viable.

(3) The commissioner's response to the local agency's letter of intent is based on the review described in paragraph (2) of

this subsection and is sent to the local agency by certified mail, return receipt requested.

(A) If the commissioner approves the letter of intent, the response includes notification of such approval.

(B) If the commissioner does not approve the letter of intent, the response includes the reasons for disapproval.

(b) Appointment of board of trustees. If the local agency receives approval of its letter of intent, then it prescribes the criteria and procedures for the appointment of members of a board of trustees as described in the Texas Health and Safety Code, §534.002 or §534.003, and §534.004, §534.005, and §534.0065. The local agency prescribes and makes available for public review the elements listed in the Texas Health and Safety Code, §534.004(a). If more than one agency is involved, the local agencies shall enter into a contract of interlocal agreement that stipulates the number of board members and the group from which the members are chosen, as provided in the Texas Health and Safety Code, §534.003(c). The local agencies may renegotiate or amend the contract of interlocal agreement as necessary to change the:

(1) method of choosing the board of trustees members; or

(2) membership of the board of trustees to more accurately reflect the ethnic and geographical diversity of the region's population.

(c) Initial plan.

(1) Submission. The board of trustees develops and submits to the commissioner an initial written plan to provide effective mental health and mental retardation services to the residents of the proposed region. The board of trustees shall appoint a mental health planning advisory council and a mental retardation planning advisory council, each with at least 50% representation of persons who have received or are receiving services or their family members, to assist in developing the initial plan. The board of trustees shall also seek input through a public process (e.g., public hearings, focus groups, town meetings) from the citizens in the proposed region regarding local needs and priorities. The initial plan must include the following elements:

(A) a comprehensive service description, which includes:

(i) a statement of the mission, vision, values, and principles which provide the foundation of the proposed community center's local service delivery system;

(ii) a definition of all populations to be served;

(iii) a description of relevant internal and external assessments and evaluations which may provide direction for the local strategic planning process;

(iv) a statement of local service needs and priorities to be addressed through a combination of resource development, expansion, reduction, and termination with the local service delivery system with the rationales for these selections;

(v) a summary of needs assessment data and processes used in the determination of local service needs and priorities;

(vi) identified gaps in services and supports in the local service delivery system which may assist in the determination of local service needs and priorities;

(vii) a description of existing local mental health and mental retardation resources and planned resource development activities;

(viii) a statement regarding innovative services considered and how these affect the local strategic planning process;

(ix) a statement of management needs and priorities to support an effective and efficient local service delivery system; and

(x) plan objectives, strategies, and outcomes.

(B) a charter in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §401.454 of this title (relating to Exhibits).

(C) a prospectus, which describes:

(i) any proposed transfer of funds, assets, liabilities, personnel, and consumer and administrative records/information from state- operated community services (SOCS) or other community centers and the time frames for transfer;

(ii) any identified additional available funds;

(iii) the arrangements for uninterrupted delivery of services; and

(iv) the impact, and resolution if warranted, of current contractual obligations.

(2) Review. The commissioner designates staff who are knowledgeable of community center operations to review the initial plan. The designated staff may verify the information contained in the initial plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.

(3) Notification of intended recommendation. The department notifies the board of trustees of the commissioner's intention to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:

(A) the board of trustees may request an administrative hearing "proposal for decision" in accordance with §§403.453-403.458 of Chapter 403, Subchapter O, of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the initial plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;

(B) the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and

(C) the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.

(4) Approval or disapproval. The commissioner recommends approval or disapproval of the initial plan to the Texas MHMR

Board. The commissioner may recommend approval of portions of the initial plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the initial plan by staff. A recommendation of approval requires that the assessment confirms that the initial plan properly fulfills the requirements of paragraph (1) of this subsection to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services for persons entering or leaving department facilities.

(A) If the Texas MHMR Board approves the initial plan in its entirety, then the department issues a certificate of recognition as a community center.

(B) If the Texas MHMR Board approves portions of the initial plan and such approved portions properly fulfill the requirements of paragraph (1) of this subsection, then it instructs the official record to reflect such portions as the approved initial plan in its entirety and the department issues a certificate of recognition as a community center.

(C) If the Texas MHMR Board does not approve the initial plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, including time frames.

(5) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.

§401.446. Updating a Community Center's Current Plan.

(a) Submission. On an assigned three-year cycle, or as requested by the Texas MHMR Board, or as necessary, the board of trustees of a community center shall submit to the commissioner an update of its current plan, which reflects the center's purposes and functions. The updated plan shall be in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §401.454 of this title (relating to Exhibits).

(b) Review. The commissioner designates staff who are knowledgeable of community center operations to review the updated plan. The designated staff may verify the information contained in the updated plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.

(c) Notification of intended recommendation. The department notifies the board of trustees of the commissioner's intention to recommend approval or disapproval of the updated plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:

(1) the board of trustees may request an administrative hearing "proposal for decision" in accordance with §§403.453-403.458 of Chapter 403, Subchapter O, of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the updated plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;

(2) the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and

(3) the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the updated plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.

(d) Approval or disapproval. The commissioner recommends approval or disapproval of the updated plan to the Texas MHMR Board. The commissioner may recommend approval of portions of the updated plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the updated plan by staff. A recommendation of approval requires that the assessment confirm that the updated plan properly fulfills the requirements contained in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §401.454 of this title (relating to Exhibits), to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services for persons entering or leaving department facilities.

(1) If the Texas MHMR Board approves the updated plan in its entirety, then the department issues an updated a certificate of recognition as a community center.

(2) If the Texas MHMR Board approves portions of the updated plan and such approved portions properly fulfill the requirements contained in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §401.454 of this title (relating to Exhibits), then it instructs the official record to reflect such portions as the approved updated plan in its entirety and the department issues an updated certificate of recognition as a community center.

(3) If the Texas MHMR Board does not approve the updated plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, if any, including time frames and the functions the community center may perform pending approval. If the Texas MHMR Board does not provide requirements for resubmission then the department no longer recognizes the entity as a community center.

(e) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan or as provided for in subsection (d)(3) of this section.

§401.447. *Modifying a Community Center's Current Plan.*

(a) Submission. Within the assigned three-year cycle for updating its current plan as described in §401.446 of this title (relating to Updating a Community Center's Current Plan), the board of trustees of a community center shall submit a modification of its current plan in accordance with this section as frequently as necessary to reflect material changes in the community center's local agencies, functions, or region. The modified plan shall be in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §401.454 of this title (relating to Exhibits).

(1) If a local agency wants to affiliate with an existing community center and the existing center agrees, then the board of trustees of the existing center will submit to the commissioner for approval a modification of the center's current plan to reflect such affiliation, including:

(A) any proposed expansion of the center's region;
(B) a copy of the new contract of interlocal agreement; and

(C) official documentation (e.g., resolution) confirming such intent to affiliate from each present local agency and the proposed affiliated local agency.

(2) If a local agency wants to terminate its organizational combination with another local agency and end its affiliation with an existing community center, then the appointing authorities of the local agencies must terminate the original contract of interlocal agreement and enter into a new contract of interlocal agreement if more than one local agency remains. The board of trustees of the existing center submits a modification of the center's current plan to reflect the termination of such affiliation to the commissioner for approval, including:

(A) any change of the center's region;
(B) a copy of the new contract of interlocal agreement, if applicable; and

(C) official documentation (e.g., resolution) from the local agency confirming its intent to terminate affiliation with the center.

(3) If an existing community center wants to expand or reduce its functions or region, or otherwise substantially amend its functions, such as changing the population served, the services provided, or its name, then the board of trustees of the center submits a modification of the center's current plan to reflect such changes to the commissioner for approval.

(b) Review. The commissioner designates staff who are knowledgeable of community center operations to review the modified plan. The designated staff may verify the information contained in the modified plan. If additional information or changes are required for staff to recommend approval, then staff will notify in writing the board of trustees and specify requirements for resubmission, including time frames.

(c) Approval or disapproval. Staff recommends approval or disapproval of the modified plan to the commissioner. Staff may recommend approval of portions of the modified plan and disapproval of other portions. Staff may also recommend that the modified plan be submitted as an updated plan for approval by the Texas MHMR Board.

(1) If the commissioner approves the modified plan, then the department notifies the board of trustees in writing of the approval in a timely manner.

(2) If the commissioner approves portions of the modified plan then the commissioner instructs the official record to reflect such portions as the approved modified plan. The department shall notify the board of trustees in writing of the portions included in the approved modified plan in a timely manner.

(3) If the commissioner does not approve the modified plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, if any, including time frames. The requirement for resubmission may be submission as an updated plan for approval by the Texas MHMR Board.

(d) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.

§401.448. Dissolution or Merger of Community Centers.

(a) Dissolution. If a community center decides to cease operations and dissolve, the center's board of trustees and each local agency shall inform the commissioner in writing of such a decision. The department, the board of trustees, and each local agency shall agree to a plan of dissolution that addresses at least the following factors:

- (1) the center's assets and liabilities (including personnel);
- (2) necessary audits to be conducted;
- (3) closure activities, including arrangements for uninterrupted delivery of services;
- (4) the transfer, archival, and security of records and information; and
- (5) the future plans for the region's service delivery system (e.g., affiliation with an existing center, establishment of a new center, reliance upon a state-operated community services (SOCS)).

(b) Merger. If two or more existing community centers agree to merge into a new community center, then the boards of trustees of the involved centers submit to the commissioner an initial plan in accordance with §401.445(c) of this title (relating to Process to Establish a New Community Center). The initial plan must represent the services to be provided in the combined expanded region and include a copy of the new contract of interlocal agreement and official documentation (e.g., resolution) confirming intent to merge from each local agency involved.

§401.450. Standards of Administration for Boards of Trustees of Community Centers.

(a) Each board of trustees is accountable to the department, pursuant to the Texas Health and Safety Code, §534.033, for its programs that:

- (1) use department funds or local match;
- (2) provide core or required services;
- (3) provide services to former consumers of a department facility; or
- (4) are affected by litigation in which the department is a defendant.

(b) Each board of trustees is responsible for:

- (1) assuring the submission of periodic financial and performance reports to the department in a format and schedule prescribed by the department;
- (2) instituting effective management procedures which assure the maximum utilization of all funds and facilitates the achievement of the goal of delivering services of high quality in a cost effective manner;
- (3) complying with the Texas Health and Safety Code, §534.022, when financing property and improvements;
- (4) retaining all financial records, supporting documents, statistical records, and any other documents pertinent to its community center budgets, contracts, performance/workload measure, and

persons served for a period of five years. If audit discrepancies have not been resolved at the end of five years, the records must be retained until resolution;

(5) complying with the Open Meetings Act, Texas Government Code, Chapter 551;

(6) requiring depositories of community center funds to secure deposits through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or to secure deposits using collateral in a manner that protects the deposited funds;

(7) submitting a copy of the approved minutes of board of trustees meetings to the department and to each local agency in accordance with the Texas Health and Safety Code, §534.009(d); and

(8) ensuring community center staff abide by applicable laws, department rules, and standards.

(c) Each board of trustees is accountable to the department and to each local agency for receiving appropriate training as required by the Texas Health and Safety Code, §534.006, and this subsection.

(1) Before assuming office, new members must receive initial training, including, but not limited to:

(A) the importance of local planning and the roles and functions of the board of trustees, planning advisory committees, community center staff, and other service organizations;

(B) the enabling legislation that created the community center;

(C) the current philosophies and program principles on which service delivery systems are founded, information about the service and support needs of people with mental illnesses, mental retardation, and related conditions, and the range of environments in which those services may be delivered;

(D) an overview of mental illnesses, mental retardation, and related conditions;

(E) an overview of the current local and state service delivery system, including descriptions of the types of mental health and mental retardation services provided by the community center;

(F) the community center's budget for the current program year;

(G) the results of the most recent formal audit of the community center;

(H) the requirements of the Open Meetings Act, Texas Government Code, Chapter 551, and the Open Records Act, Texas Government Code, Chapter 552;

(I) the requirements of laws concerning conflict of interest and other laws relating to public officials;

(J) any ethics policies adopted by the community center; and

(K) applicable state and federal laws, rules, standards, and regulations.

(2) Utilizing input from persons who have received or are receiving services, their family members, and advocates, the training programs must provide orientation in the perspectives and issues of persons receiving services.

(3) Annual training must be provided for current board of trustees members, which is administered by the professional staff of the community center, including the center's legal counsel.

(4) Guidelines for training are developed and updated as necessary by an advisory committee for the department, which includes representatives of advocacy organizations broadly representative of the interests of persons with mental illness or mental retardation and their families, and representatives of boards of trustees. The current guidelines are referenced as Exhibit B in §401.454 of this title (relating to Exhibits).

(d) Each board of trustees may accept special funds for long-range projects and plans. These funds must be kept separate from the community center's operating budget and may not be used as local match. An annual accounting of these reserve funds (center trust, endowment, or foundation resources) must be made to the department.

(e) Each board of trustees must obtain department approval for any building alterations, renovation, or repair maintenance expenses exceeding \$50,000 for each project per fiscal year per community center if department funds or local match be used. In accordance with the review process and to avoid undue delays, a board of trustees must seek advance written approval from the department at least 30 days prior to the release of the project for competitive bids.

(f) Each board of trustees must ensure that its community center receives written approval from the department prior to purchase, lease-purchase, or any other transaction which will result in the community center's ownership of real property, including buildings, if any department funds or local match are involved. In addition, for acquisition of nonresidential property, the community center must notify each local agency not later than the 31st day before it enters into a binding obligation to acquire the property. A community center must provide written notification to the department and each local agency not later than the 31st day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of department funds or local match. Upon request, the commissioner may waive the 30-day requirement to notify the department on a case-by-case basis. Notification of the department is not required for donations of real or personal property under the Texas Health and Safety Code, Title 7, §534.018 or §534.019, that do not require the expenditure of any funds by the community center and that have been approved by the board of trustees.

(1) All notices and requests for approval are submitted on the TXMHMR Property Review Form and accompanied by supporting information including, but not necessarily limited to:

(A) the reason for purchasing the property or a brief explanation of the purpose it will serve;

(B) a summary of the plan for paying for the property, including a statement regarding whether department funds or local match will be used either directly or in the retirement of any debt associated with the acquisition;

(C) if unimproved, an assessment of the suitability of the property for construction purposes or, if improved, an assessment of the current condition of the buildings;

(D) an independent appraisal of the real estate the community center intends to purchase conducted by an appraiser

certified by the Texas Appraiser Licensing and Certification Board; however, the board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the past two years;

(E) a statement that the board of trustees and executive staff are not participating financially in the transaction and will derive no personal benefit from the transaction; and

(F) a statement detailing the need to waive the 30-day requirement if a waiver is being requested.

(2) A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless;

(A) the purchase or lease-purchase of that property at that price is necessary;

(B) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and

(C) a majority of the board approves the transaction.

§401.453. Determination of Salaries of Community Center Employees.

Pursuant to the Texas Health and Safety Code, Title 7, §534.011, the board of trustees of a community center that does not have a contract with the department must determine the salaries of its employees utilizing only one of the methods described in paragraphs (1)- (3) of this section. The method for determining salaries of community center employees described in a contract between a community center and the department supersedes the requirements in this section.

(1) Market analysis. If the board of trustees chooses to determine salaries and benefits with a market analysis, documentation must be maintained on which studies are being used and the positions to which they pertain. Documentation must be updated every two years. Records maintenance must include:

(A) the current position documentation which describes the actual work being performed in the positions; and

(B) evidence of an approximate job match between the community center position and the documentation obtained in the job market.

(2) Internal study. If the board of trustees chooses to determine salaries and benefits with an internal salary study, the pay structure must be designed to recognize the internal relationships among jobs of the center. The internal salary study must also take into consideration market demands that permit the community center to compete with other employers for available and desirable human resources. The internal salary study process must include the:

(A) current position documentation which describes the actual work being performed in the positions;

(B) a method of establishing the internal relationships of jobs which may be either whole job ranking or point-factor job evaluation methodologies;

(C) identification of competitive markets that are appropriate for various types of positions, such as:

(i) state salaries;

- (ii) local government salaries;
- (iii) private sector salaries; and
- (iv) geographic considerations (i.e., local area, regional or national issues);

(D) compensation comparisons which include both cash compensation and benefits to identify the community center's competitive posture in all reward areas; and

(E) proposed compensation adjustments which consider current market competitive posture versus desired position and general wage increase trends.

(3) State Classification Plan. If the board of trustees chooses to use the State Classification Plan to determine salaries, the community center must:

(A) compare current classification specifications with state classification plan job specifications;

(B) compare current salaries used with the salary schedule in Article IX, of the current appropriations act. All Steps 01 through 08 may be used within pay groups. Amounts less than Step 01 may be authorized by the board of trustees as well; and

(C) select an appropriate classification to determine the compensation for each position. If a similar position cannot be found in the State Classification Plan, the board of trustees may utilize the previously described market analysis or internal salary study to determine the compensation for the position. In lieu of these two methods, a board of trustees may petition the commissioner to exclude such a position, at a specific rate, from the State Classification Plan by submitting:

(i) a written proposal for an exemption for the position needed, stating the salary;

(ii) current position documentation which describes the actual work being performed in the position; and

(iii) a statement of the level of compensation sought.

§401.455. References.

Reference is made in this subchapter to the following federal and state laws and rules:

- (1) Texas Health and Safety Code, Title 7, Chapter 534;
- (2) Texas Government Code, Chapters 551, 552, and 783;
- (3) Civil Rights Act of 1964;
- (4) Americans With Disabilities Act(ADA) of 1990;
- (5) Chapter 401, Subchapter D of this title (relating to Contracts Management for Community-Based Services); and
- (6) Chapter 403, Subchapter O of this title (relating to Administrative Hearings of the Department in Contested Cases).

§401.456. Distribution.

This subchapter will be distributed to:

- (1) members of the Texas MHMR Board;
- (2) executive, management, and program staff of Central Office;

(3) chairpersons, boards of trustees, and executive directors of community centers;

(4) executive directors of state-operated community services (SOCS); and

(5) advocacy organizations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712765

Ann Utley

Chairman

Texas Department of Mental Health and Mental Retardation

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For further information, please call: (512) 206-4516



25 TAC §401.449

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers and with the Texas Health and Safety Code, §534.001(e), which requires the Texas MHMR Board to adopt rules specifying the procedures for submitting, approving, and modifying a community center's plan.

§401.449. Contracting for Services.

(a) A community center may contract for services in accordance with applicable laws, the appropriations act, and department rules, including but not limited to:

(1) Texas Health and Safety Code, §534.015(c), which permits the board of trustees, with the commissioner's approval, to contract with the governing body of a county or municipality not in its region to provide services to residents of that county or municipality; and

(2) Chapter 401, Subchapter D of this title (relating to Contracts Management for Community-based Services).

(b) The department may designate a community center as a local authority or otherwise contract for services with the community center in accordance with the provisions of Chapter 401, Subchapter D of this title (relating to Contracts Management for Community-based Services), and as allowed by state law, including the appropriations act.

(1) If the department designates a community center as a local authority it will enter into a contract for services with the community center, which requires local match from the center. If the center is unable or unwilling to fulfill its contractual obligations to provide services or to exercise adequate control over expenditures and assets, then the commissioner may appoint a management team or an individual to protect the funds appropriated under the Appropriations Act and ensure the continued provision of services. The appointment of a management team/individual to manage and operate the community center may be made if the commissioner finds:

(A) the center has wilfully or negligently failed to discharge its duties under the contract;

(B) an officer or employee of the center has misused state or federal funds;

(C) an officer or employee of the center has engaged in a fraudulent act, transaction, practice, or course of business;

(D) the life, health, welfare, or safety of a person served by the center is or may be endangered by an act or omission of the center;

(E) the center has failed to maintain fiscal records in accordance with the Texas Government Code, Chapter 783;

(F) the center has failed to maintain proper control over its assets in accordance with the Texas Government Code, Chapter 783;

(G) the center has failed to respond as prescribed by the commissioner to a deficiency in a review or audit; or

(H) the center has failed to comply with applicable sections of the Texas Health and Safety Code, Chapter 534, and department rules.

(2) The department shall notify in writing the community center and each local agency of the appointment of the management team/individual and the circumstances on which the appointment is based.

(3) The community center may appeal an appointment of a management team/individual in accordance with this paragraph. The filing of a notice of appeal does not stay the appointment of a management team/individual if the appointment is made on a finding under paragraph (1)(D) of this subsection.

(A) The community center appeals the appointment of a management team\ individual by requesting an administrative hearing "proposal for decision" in accordance with §§403.453-403.458 of Chapter 403, Subchapter O, of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the finding(s) under paragraph (1) of this section for which the management team/individual was appointed. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner.

(B) The commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence.

(C) The department notifies the community center of the commissioner's decision to uphold or reverse the original decision to appoint a management team/individual. If the decision is to uphold the original decision, then no other appeal process is available.

(4) The management team/individual may perform any or all of the following functions as defined by the commissioner:

(A) evaluate, redesign, modify, administer, supervise, or monitor the management, procedures, or operations of the center;

(B) hire, supervise, discipline, reassign, or terminate employment of employees of the center;

(C) reallocate resources and manage the assets of the center;

(D) provide technical assistance to officers and employees of the center and require or provide employee training;

(E) approve or disapprove each financial transaction and expenditure the center makes and each contract the center executes;

(F) redesign, modify, or terminate any of the center's programs or services;

(G) direct the board of trustees, executive director, chief financial officer, or other fiscal or programmatic officer of the center to take action;

(H) exercise all powers and duties of the officers and employees of the center; and

(I) make recommendations to each local agency regarding the removal of some or all members of the center's board of trustees.

(5) The management team/individual is authorized to use only the community center's funds or assets that are provided or required by the contract (i.e., state funds, federal funds for which the department has oversight, and local match).

(6) The powers and duties of the board of trustees are exercised under the supervision of the management team/individual.

(7) The management team/individual reports its activities to the commissioner and the board of trustees monthly.

(8) The commissioner reviews and evaluates the performance of the center each month to determine the feasibility of restoring the responsibility of management and operation of the center to the board of trustees.

(9) The appointment of a management team/individual continues until:

(A) the commissioner determines that circumstances which support a finding under paragraph (1) of this subsection no longer exist; or

(B) the department cancels the contract with the center.

(10) When the commissioner finds that circumstances which support a finding under paragraph (1) of this subsection no longer exist, then the commissioner shall terminate the powers and appointment of the management team/individual. Following termination, the responsibility of managing and operating the center is restored to the authorized officers and employees.

(11) The commissioner may direct that all costs of the management team/individual be paid by the center.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Utley

Chairman

Texas Department of Mental Health and Mental Retardation

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Proposal publication date: July 18, 1997
For further information, please call: (512) 206-4516



25 TAC §§401.451-401.463, 401.465, 401.466

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§401.451-401.463, 401.465, and 401.466 of Chapter 401, Subchapter G, concerning community mental health and mental retardation centers without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 5995). New §§401.441-401.456, concerning the same, which replace the repealed sections are contemporaneously adopted in this issue of the *Texas Register*.

The sections are repealed to allow the adoption of new sections.
No public comment was received on the proposed repeals.

The repeals of these sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712763
Ann Utley
Chairman
Texas Department of Mental Health and Mental Retardation
Effective date: October 15, 1997
Proposal publication date: June 24, 1997
For further information, please call: (512) 206-4516



Chapter 402. Client Assignment and Continuity of Services

Subchapter H. Placement Appeals Procedures-Mental Retardation Services

25 TAC §§402.281-402.298

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeal of §§402.281- 402.298 of Chapter 402, Subchapter H, concerning placement appeals, without changes to the text as proposed in the Tuesday, July 29, 1997, issue of the *Texas Register* (22 TexReg 7008).

The repeal is adopted because the appeal procedures described in the subchapter are no longer necessary as a result of changes made to Chapter 402, Subchapter I concerning the movement of individuals with mental retardation from department facilities.

No written comments were submitted concerning the proposed repeal.

The repeal is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712762
Ann Utley
Chairman
Texas Department of Mental Health and Mental Retardation
Effective date: October 15, 1997
Proposal publication date: July 29, 1997
For further information, please call: (512) 206-4516



Chapter 405. Client (Patient) Care

Subchapter BB. Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded

25 TAC §405.725

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeal of §405.725, concerning determination of the least restrictive environment, of Chapter 405, Subchapter BB, concerning admissions, transfers, furloughs, and discharges – state schools for the retarded, without changes to the text as proposed in the Tuesday, July 29, 1997, issue of the *Texas Register* (22 TexReg 7009).

The repeal is adopted because guidelines for determining the most appropriate living environment for persons receiving residential mental retardation services have been incorporated into Chapter 402, Subchapter I, concerning movement of individuals with mental retardation from departmental facilities.

No written comments were submitted concerning the proposed repeal.

The repeal is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712759
Ann Utley
Chairman
Texas Department of Mental Health and Mental Retardation
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Proposal publication date: July 29, 1997
For further information, please call: (512) 206-4516



Subchapter GG. Admissions, Prescribing of Psychoactive Drugs

25 TAC §§405.821–405.835

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeal of §§405.821-405.835 of Chapter 405, Subchapter GG, concerning prescribing of psychoactive drugs, without changes to the text as proposed in the Tuesday, July 29, 1997, issue of the *Texas Register* (22 TexReg 7009).

The repeal is adopted because guidelines for prescribing psychoactive drugs have been incorporated into Chapter 405, Subchapter A, concerning prescribing of medications—mental health, and Chapter 405, Subchapter B, concerning prescribing of medications—mental retardation facilities.

No written comments were submitted concerning the proposed repeal.

The repeal is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712761

Ann Utley

Chairman

Texas Department of Mental Health and Mental Retardation

Effective date: October 15, 1997

Proposal publication date: July 29, 1997

For further information, please call: (512) 206-4516

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 145. Parole

Revocation of Administrative Release (Parole, Mandatory, Supervision, and Executive Clemency)

37 TAC §145.44

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.44, concerning the procedure after waiver of the preliminary hearing, with changes to the proposed text as published in the June 17, 1997, issue of the *Texas Register* (22 TexReg 5819).

The Board proposes an amendment to §145.44 for the purpose of streamlining hearing procedures to allow the designee of the Board to schedule a revocation hearing without Board sign-off following waiver of the preliminary hearing.

A technical change was made to the wording of the proposed text substituting the word "may" for "shall" in the decision of the board panel to proceed to a revocation hearing.

No comments were received regarding adoption of the amendment.

The amended rule is proposed under the Code of Criminal Procedure, Article 42.18, §14 (a) - (c), which vests the Board with authority to promulgate rules under which releasees are to be heard on parole revocations.

§145.44. Procedure after Waiver of Preliminary Hearing.

Following the waiver of the right to a preliminary hearing, the board panel or a designee of the board may proceed to a revocation hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712861

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Effective date: October 20, 1997

Proposal publication date: June 17, 1997

For further information, please call: (512) 463-1883

37 TAC §145.48

The Texas Board of Pardons and Paroles adopts the repeal of 37 TAC §145.48 concerning the procedure for the pre-revocation hearing conference, without changes to the proposed text as published in the June 17, 1997, issue of the *Texas Register* (22 TexReg 5819).

The Board proposes the repeal of §145.48 for the purpose of eliminating an obsolete rule.

No comments were received regarding adoption of the repeal.

The repeal is proposed under the Code of Criminal Procedure, Article 42.18, 14 (a) - (c), which vests the Board with authority to promulgate rules under which releasees are to be heard on parole revocations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712862

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Effective date: October 20, 1997

Proposal publication date: June 17, 1997

For further information, please call: (512) 463-1883

37 TAC §145.50

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.50 concerning the procedure following a probable cause decision in a preliminary hearing, with changes to the proposed text as published in the June 17, 1997, issue of the *Texas Register* (22 TexReg 5819).

The Board proposes an amendment to §145.50 for the purpose of streamlining hearing procedures to allow the designee of the Board to schedule a revocation hearing without board sign-off following a probable cause decision in a preliminary hearing.

One written comment was received, in which the commenter suggested: (1) that the designee of the Board have the option of recommending a non-revocation action to the Board; and (2) the Board's designee should not be required to make a finding regarding custodial status as part of the probable cause decision.

In response to the comment, changes were made in proposed Subsection (d) to: (1) change "shall" to "may" to provide the designee of the Board the option to recommend alternatives to revocation; and (2) delete the requirement that the probable cause determination include a finding that the releasee "should remain in custody pending a revocation hearing," retaining the requirement that the finding should be "whether there is probable cause to proceed to a revocation hearing."

The amended rule is proposed under the Code of Criminal Procedure, Article 42.18, §14 (a)-(c), which vests the Board with authority to promulgate rules under which releasees are to be heard on parole revocations.

§145.50. Preliminary Hearing.

(a) The board panel or a designee of the board shall conduct the preliminary hearing.

(b) The preliminary hearing shall be a hearing conducted to determine if probable cause exists that the releasee violated the rules and conditions of parole or mandatory supervision.

(c) At the conclusion of the hearing, the hearing officer shall collect and prepare:

(1) All documents and exhibits offered or admitted into evidence at the preliminary hearing;

(2) A summary of the evidence relied upon to formulate the hearing officer's findings; and

(3) the tape recording of the hearing.

(d) If the decision of the board panel or a designee of the board is that there is probable cause to proceed to a revocation hearing, the board panel or a designee of the board may schedule a revocation hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712864

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Effective date: October 20, 1997

Proposal publication date: June 17, 1997

For further information, please call: (512) 463-1883

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Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 221. Proficiency Certificates and Other Post-Basic Licenses Division

37 TAC §§221.15, 221.17, 221.19, 221.21, 221.23, 221.25, 221.27, 221.29, 221.31

The Texas Commission on Law Enforcement Officer Standards and Education adopts new §§221.15, 221.17, 221.19, 221.21, 221.23, 221.25, 221.27, 221.29, and 221.31, concerning proficiency certificates, without changes to the proposed text as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6257).

These sections were developed pursuant to an ongoing review and reorganization of the Commission's rules. The reorganization plan was developed by staff and considered by the Commission's Ad Hoc Rules Committee in response to concerns that the Commission's Administrative Code had become outdated, too complex and difficult to understand. Included in this ongoing reorganization is a schedule for renumbering certain sections of the rules as a way to more clearly label specific topics and to more fully utilize the chapter numbers available in the Administrative Code for the Commission's rules. These new sections will replace current §§211.85, 211.103 and 211.106, concerning proficiency certificates, which will be repealed.

In addition to provisions contained in the current rules, the new sections contain a number of new provisions. Section 221.15 provides that a proficiency certificate may not be issued if a license holder has not completed continuing education requirements during the most recent reporting period. Continuing education contributes to the proficiency of the law enforcement professionals the Commission licenses. In fact, the Legislature has mandated that certain officers receive continuing education in particular topic areas related to their duties. Staff reasoned, and the Commissioners concurred, that issuance of a proficiency certificate to a licensee who had not completed the required continuing education would falsely indicate that the licensee was up-to-date with all educational requirements, and that delaying issuance of proficiency certificates until the individual had complied with continuing education requirements would more accurately reflect the licensee's proficiency.

Section 221.17 and §221.19 require that license holders must have at least one year of experience before they are issued a basic peace officer or jailer certificate. Currently, basic certificates are issued immediately upon licensing. Staff reasoned, and the Commissioners concurred, that requiring one year of experience would more accurately reflect a basic level of proficiency.

Other nonsubstantial changes include a clarification of the requirement for an emergency first aid and lifesaving course to qualify for a mental health peace officer certificate. The new rule provides that such course must be taken no more than six months prior to applying for the certificate. In addition,

Commission course titles were substituted in a number of sections for generic course topics for clarity.

No comments were received regarding the adoption of these new sections.

The Commission is authorized to adopt new rules by Texas Government Code §415.010 (Vernon 1996).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712725

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: November 1, 1997

Proposal publication date: July 4, 1997

For further information, please call: (512) 450-0188

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter I. Income

40 TAC §3.903

The Texas Department of Human Services (DHS) adopts new §3.903, concerning Income, without changes to the proposed text as published in the June 6, 1997, issue of the *Texas Register* (22 TexReg 5620). The text will not be republished.

The justification for the new section is to implement the requirement for clients to apply for and accept federal benefits if referred and approved.

The new section will function by ensuring that the department will be in compliance with state legislation.

The department received a comment from the Texas Legal Services Center. A summary of the comment and the response follow.

Comment: The absence of guardianship services likely has resulted in some gravely incapacitated persons not being able to apply for SSI because they cannot do so themselves, and they have no one who can do so for them.

Response: DHS included good cause exemptions to the requirement to pursue income. Good cause is established for Supplemental Security Income (SSI) referrals, if the client is physically or mentally unable to complete the SSI application process, and DHS fails to or is unable to provide assistance needed to complete the SSI application process.

Comment: DHS received a suggestion to include the following language in the final rule: "No sanction can be imposed for failure to complete the SSI application process, until a hearing officer has independently determined that the client is neither physically nor mentally unable to complete the SSI application process, and that TDHS has not failed to nor been unable to provide assistance needed to complete the SSI application. The determination required by the hearing officer may be made as part of an appeal by the client. If the client does not timely appeal a notice of proposed sanction, the client shall be deemed to have appealed it, and the independent determination will be made by a hearing officer sua sponte. Regardless of whether the determination is made at the request of the client or sua sponte, TDHS has the burden of proof."

Response: DHS hearing officers are not trained to determine anyone's physical or mental incapacity. In addition, automatic appeals are not scheduled for any adverse actions which affect eligibility. Good cause provisions dealing with these situations were included in the proposed rules.

Comment: Additional language was suggested for inclusion in the final rule: "TDHS will provide assistance with the application as requested by the client. If the client does not request assistance, but staff of TDHS deem that assistance would make an application more likely to succeed, staff will offer all possible assistance. Good cause exemptions will be granted to individuals unable to complete the application process and who have no one who could provide assistance to them in negotiating the application process."

Response: Good cause provisions dealing with these situations were included in the proposed rules.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The new section implements the Human Resources Code §§22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712706

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: January 1, 1998

Proposal publication date: June 6, 1997

For further information, please call: (512) 438-3765

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Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) adopts amendments to §§15.100, 15.435, 15.443, 15.450, 15.460, and 15.621, concerning General Information, without changes to the proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7465).

The justification for the amendments is to clarify policy to ensure consistent application statewide.

The amendments will function by ensuring consistent application of policy statewide.

No comments were received regarding adoption of the amendments.

Subchapter A. General Information

40 TAC §15.100

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712707

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: November 1, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 438-3765



Subchapter D. Resources

40 TAC §15.435, §15.443

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712728

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: November 1, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 438-3765



Subchapter E. Income

40 TAC §15.450, §15.460

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712709

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: November 1, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 438-3765



Subchapter G. Application for Medicaid

40 TAC §15.621

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712710

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: November 1, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 438-3765



Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter Q. Purchased Protective Services

40 TAC §700.1733

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §700.1733, concerning Residential Therapeutic Care, without changes to the proposed text as published in the August 5, 1997, issue of the *Texas Register* (22 TexReg 7212).

The justification for the amendment is to allow the TDPRS executive director, in certain situations, to extend a child's eligibility for residential treatment up to an additional 12 months.

The amendment will function by ensuring that children with severe special needs are more likely to have their treatment needs met.

During the comment period, TDPRS received a comment from two individuals in support of the proposal.

The amendment is adopted under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. In addition, the amendment is adopted under Public Law Number 96-272, Title I, which authorizes the department to administer foster-care and adoption assistance programs provided for under the Social Security Act, Title IV-E.

The amendment is also adopted under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to the department.

The amendment implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712892

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: October 20, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 438-3765



Chapter 710. Protection of Clients and Staff

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§710.1-710.3, 710.7, and 710.8, and adopts the repeal of §§710.81-710.87, concerning Protection of Clients and Staff, without changes to the proposed

text as published in the August 5, 1997, issue of the *Texas Register* (22 TexReg 7213).

The justification for the amendments is to implement legislative changes related to investigations of abuse, neglect, and exploitation in facilities operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR). The amendments implement a priority system for investigations conducted in TDMHMR facilities and related programs; modifies existing timeframes for the completion of investigations; and clarifies agency policy regarding the resolution of disagreements on investigation findings. The repeals are adopted because the 73rd Legislature transferred to the Texas Department of Health the responsibility for investigations in private psychiatric hospitals. TDPRS is also changing the name of Subchapter A to "Abuse, Neglect, and Exploitation of Persons Served by TDMHMR Facilities and State-Operated Community Services" and repealing Subchapter C titled "Patient Abuse in Private Psychiatric Hospitals."

The amendments and repeals will function by increasing efficiency in investigations of abuse, neglect, and exploitation in facilities operated by Texas Department of Mental Health and Mental Retardation and state-operated community services.

No comments were received regarding adoption of the amendments and repeals.

Subchapter A. Abuse, Neglect, and Exploitation of Persons Served by TDMHMR Facilities and State-Owned Community Services

40 TAC §§710.1-710.3, 710.7, 710.8

The amendments are adopted under the Human Resources Code, Title 2, Chapter 48, which provides the department with the right to investigate reports of abuse, exploitation, or neglect of an elderly or disabled person.

The amendments implement §1.06 of Acts 1991, 72nd Legislature, 1st Called Session, Chapter 15, as amended by Acts 1993, 73rd Legislature, Chapter 747, §1.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712893

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: October 20, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 438-3765



Subchapter C. Patient Abuse in Private Psychiatric Hospitals

40 TAC §§710.81-710.87

The repeals are adopted under the Human Resources Code, Title 2, Chapter 48, which provides the department with the right to investigate reports of abuse, exploitation, or neglect of an elderly or disabled person.

The repeals implement §1.06 of Acts 1991, 72nd Legislature, 1st Called Session, Chapter 15, as amended by Acts 1993, 73rd Legislature, Chapter 747, §1.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712894

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: October 20, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 438-3765



Chapter 720. Twenty-four Hour Care Licensing

Subchapter A. Standards for Child-Placing Agencies

40 TAC §720.33, §720.47

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§720.33 and 720.47, concerning Standards for Child-Placing Agencies, with changes to the proposed text as published in the August 5, 1997, issue of the *Texas Register* (22 TexReg 7216).

The justification of the amendments is to include standards that require the sharing of information between agencies when an agency home moves from one child-placing agency to another and to require agencies to maintain such information for at least five years. The amendments implement legislation passed in the 75th Legislative Session that requires agencies to obtain background information about previously verified foster families from the former agency. The legislation requires the former agency to provide the information and provides immunity from civil and criminal liability for the release of the information.

During the public comment period, TDPRS received five sets of comments from individuals. One comment suggested that the time period for retention of agency home records be reduced from five to three years. Without information available at this time about the age of records that are likely to be requested, it appears prudent to retain the five-year record retention period. Two comments requested some expansion of the material in the agency home record that the rule requires to be shared. However, the legislative reference is specific about the material that must be shared and the limits of the liability protection provided. Four of the five sets received supported the proposal. The fifth set of comments consisted of questions about implementation of the rules. The department will address those questions in the appropriate format. The Advisory Committee on Child Care Administrators and Facilities considered the proposal at their September 9,

1997, meeting and recommended adoption of the rules. One advisory committee member commented in writing, suggesting that a time frame be added for a child-placing agency to respond to a request for information about an agency home. A time frame has been added in §720.47(h).

The amendments are adopted under the Human Resource Code (HRC), Chapters 40 and 42, which describe the department's regulatory and rulemaking authority.

The amendments implement HRC, Chapters 40 and 42.

§720.33. *Client Records.*

The child-placing agency must:

(1)-(7) (No change.)

(8) maintain agency home records for at least five years after an agency home is closed.

§720.47. *Foster Care Study.*

(a)-(d) (No change.)

(e) An agency studying a foster home must request information from the foster home applicant about any previous verification of the foster home by another child-placing agency. If a foster family has been verified by another agency in the past or is currently verified by another agency and seeking to move to a new agency, the agency studying the foster home applicant must request background information about the applicant from any child-placing agency that has previously verified the home. The background information must include:

(1) the home study under which the agency home was verified by a previous child-placing agency; and

(2) any record of noncompliance with minimum standards under the previous child-placing agency and the resolution of any such noncompliance.

(f) An agency studying a foster home previously verified by another child-placing agency must evaluate the information from the previous agency as part of the new foster care study and for making placement decisions.

(g) An agency that has verified an agency home is required to release background information about the home to another agency requesting the information for the purposes of conducting a foster home study. The background information must include:

(1) the home study under which the agency verified the agency home; and

(2) records of any noncompliance with minimum standards by the agency home and the resolution of any such noncompliance.

(h) An agency must respond to a written request from another child-placing agency within ten working days of receipt of the request.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712895

C. Ed Davis

Deputy Director, Legal Services

Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§725.1001, 725.1805-725.1807, and 725.2047, and adopts amendments to §§725.1403, 725.1405, 725.1407, 725.1801, 725.2008, 725.2012, and 725.2046, concerning General Licensing Procedures, without changes to the proposed text as published in the August 5, 1997, issue of the *Texas Register* (22 TexReg 7217). TDPRS is also adopting new Subchapter A, Definitions.

The justification for the new sections and amendments is to implement new requirements enacted by the 75th Legislature concerning TDPRS's child-care regulation function. These include listing of family homes caring for three or fewer children, checking for criminal history and central registry matches on employees of regulated child-care facilities and family homes, and providing for parental visits in all areas of licensed child-care facilities. Certain licensing actions available for use with licensed and certified facilities are made applicable to registered and listed family homes.

The new sections and amendments will function by providing better protection of children.

During the public comment period TDPRS received five comments from individuals. A summary of the comments and TDPRS's responses follow:

Comment regarding the affidavit: One commenter stated that the affidavit's inquiry into a mental or emotional condition was in violation of the Americans with Disabilities Act (ADA).

Response: The affidavit is mandated by statute. TDPRS cannot change the wording. The statute should be read to be consistent with the ADA. We believe that this statute is consistent with the ADA because it does not make a pre-employment inquiry into an emotional or mental condition. It inquires as to whether or not an applicant has committed certain offenses which are related to the care of children, whether that offense resulted in a conviction, a resignation from employment, a revocation of a license or other activities, including arising from having been treated for or diagnosed with an emotional disease or condition. The applicant is never asked to identify himself or herself as a person with a disability. The applicant is required to indicate whether or not conditions exist which prevent the person from performing job related duties; i.e., whether those listed offenses or conduct occurred. This is allowed by the Americans with Disabilities Act.

Comment regarding cost for criminal history and central registry checks: Depending on the amount and number of staff in a facility one commenter thought that this charge could cause an undue hardship. This commenter also suggested that the money collected for this service be returned to TDPRS instead of to the General Revenue Fund and that the money be used to benefit either Licensing Division activities or child care facilities.

Response: Sensitive to the cost for these background checks, TDPRS will be charging an amount not to exceed the cost to TDPRS for conducting these checks as required by the Legislature. The Legislature further required that the funds collected be given to the State's General Revenue Service.

Comment regarding cost of having the affidavit notarized: One commenter thought that it would be an additional cost to facilities, especially those in rural areas, to comply with the requirement that the affidavit be notarized. The commenter wanted the state to pay for this cost.

Response: This requirement was placed on facilities by the Legislature and was made as an attempt to additionally protect children from persons that would be endangering to them. There are options for the facility and home in complying with the requirement. Notaries are available statewide at a minimal cost.

Comment regarding first-aid training for child care staff: One commenter requested a 30 to 60 day waiting period after the staff was hired to obtain the training.

Response: The rule is not a change from current day care standards/rules and there will be no additional cost to facilities. Centers now are required to have at least one person trained in first aid and CPR with each group of children. First-aid training is vital training upon which a child's life may depend and TDPRS considers the training to be too important to lessen the requirement. First-aid training is available statewide and each of the state's child care licensing offices keeps a list of qualified instructors or resources for this training.

Comment regarding parental visitation: One comment was received suggesting that an exception clause be placed on the parental visitation requirement to prohibit visitation by a parent against whom a court order had been issued to restrain the parent from visitation. The commenter suggested that TDPRS make it clear that only those parents whose names were on file in the day care center could visit and remove children.

Response: There are currently rules/standards in place that require this.

Subchapter A. Definitions

40 TAC §725.1001

The new section is adopted under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The new section implements the Human Resources Code §§42.001-42.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712896

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: October 20, 1997

Proposal publication date: August 5, 1997
For further information, please call: (512) 438-3765



Subchapter O. Exemptions from Licensing

40 TAC §§725.1403, 725.1405, 725.1407

The amendments are adopted under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendments implement the Human Resources Code §§42.001-42.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712897

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: October 20, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 438-3765



Subchapter S. Administrative Procedures

40 TAC §§725.1801, 725.1805-725.1807

The amendment and new sections are adopted under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment and new sections implement the Human Resources Code §§42.001-42.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712898

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: October 20, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 438-3765



Subchapter U. Day Care Licensing Standards

40 TAC §§725.2008, 725.2012, 725.2046, 725.2047

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendments and new section implement the Human Resources Code §§42.001-42.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712899

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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Proposal publication date: August 5, 1997

For further information, please call: (512) 438-3765



TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 3. Public Information

Subchapter B. Access to Official Records

43 TAC §§3.11-3.14

The Texas Department of Transportation adopts amendments to §§3.11-3.14, concerning access to official records. Section 3.13 is adopted with changes to the proposed text as published in the July 8, 1997, issue of the *Texas Register* (22 TexReg 6419). Sections 3.11, 3.12 and 3.14 are adopted without changes and will not be republished.

Transportation Code, §201.501 authorizes the department to furnish certified copies of records. Transportation Code, §502.008 prescribes methods of releasing vehicle registration information. Government Code, §552.230 and §552.262 authorizes each agency to promulgate rules of procedure for the inspection and copying of public information and to specify the charges the agency will make for copies of public records.

House Bill 625, 75th Legislature, 1997, added Government Code, §552.127 to exempt from public disclosure information submitted by a vendor or contractor in connection with an application for certification as an historically underutilized business or disadvantaged business enterprise, except to a state or local governmental entity or with the express written permission of the applicant or the applicant's agent.

House Bill 951, 75th Legislature, 1997, amended Government Code, §552.221 and §552.301 to change the time the department has to produce public information for inspection or copying, or to request an opinion as to whether information is excepted from disclosure, from 10 calendar days to 10 business days; amended Government Code, §552.261 to allow a requestor of public information to request a written statement of charges detailing the amount of time required to produce and provide copies of public information, and provides that the statement must be signed by the public information officer with his or her name typed or printed below the signature; and amended Government Code, §552.301 to define a written request for in-

formation as including electronic mail and facsimile transmission.

Senate Bill 1069, 75th Legislature, 1997, added Transportation Code, Chapters 730 and 731, which authorize the department to disclose personal information contained in a record of a motor vehicle certificate of title or motor vehicle registration only for the uses permitted by those chapters and only if the requestor agrees in writing that he or she will not disseminate or publish the information on the Internet or similar network, or permit another to disseminate or publish the information in that manner.

Senate Bill 1069, 75th Legislature, 1997, also amended Transportation Code, §550.065, limiting the type of information that may be released concerning motor vehicle accidents and the person or entity to whom such information may be released, and to require the department to adopt a written form establishing a mechanism for determining the eligibility of persons or entities for this information.

The Federal Driver's Privacy Protection Act, 18 U.S.C. §2721, effective September 13, 1997, restricts the disclosure of information contained in vehicle registration and title records to certain individuals, agencies, or businesses. Sections 3.11-3.14 are amended to comply with the previously cited legislation.

Section 3.11 is amended to establish new definitions required to implement these statutes and applicable to this subchapter. Section 3.12 is amended to include procedures for public information requests by electronic mail or facsimile transmission. This section is also amended to specify that the department will release vehicle title and registration information only as provided by law; specify that a person receiving vehicle title and registration information must agree not to disseminate or publish the information on the Internet or permit another to do so; specify that the department will release DBE or HUB applicant information only to a state or local governmental agency or with the permission of the DBE or HUB; specify that the department will not release certain motor vehicle accident information except to certain governmental agencies or to a person who provides the name of the person involved in the accident and the date or location of the accident; and establish the number of days the department has to produce information for inspection or copying or to request an opinion as to whether the information is excepted from disclosure.

Section 3.13 is amended to revise charges for requested information, and provide that a statement of charges must include the amount of time required for retrieval and copying, including the signature and name of the employee providing the statement. Section 3.14 is amended to specify that a request for information will not be responded to over the Internet; and specify the terms of a written service agreement allowing electronic access to the department's vehicle title and registration database.

No comments were received on the amendments. However, the chart in §3.13(a) has been revised to cross reference new §23.28, concerning distribution of Texas Highways magazine subscriber and purchaser information, which is being contemporaneously adopted.

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, Government Code, §552.2611 which requires each agency by rule to specify the charges the agency will make for copies of public records, and Transportation Code, §502.008 requires release of vehicle registration information to governmental agencies.

§ 3.13. *Cost of Copies of Official Records.*

(a) Standard costs. The following table lists charges for copies and related services.

Figure 1: 43 TAC §3.13(a)

(b) Personnel and overhead charge. A personnel charge of \$15 per hour plus an overhead charge of 20% of the personnel charge will be added to the costs of any request involving the:

- (1) copying of more than 50 pages; or
- (2) retrieval and copying time of more than one hour.

(c) Document inspection. If editing of confidential information is required in order to obtain access to a record for inspection, the department may charge for the cost of making copies to edit.

(d) Payment.

(1) Payment of charges is due prior to release of copies of records.

(2) Upon release of copies of records, the department will provide to the requestor a statement describing all charges, including the amount of time required for retrieval and copying, when personnel and overhead charges are included. The statement will be signed by the employee with his or her name typed or printed below the signature.

(e) Waiver.

(1) The department will provide free of charge copies of records relating to an employee grievance proceeding under Chapter 2, §9.2 of the department's Human Resources Manual to an official party to the proceeding.

(2) The department may waive or reduce the fees charged under subsections (a) and (b) of this section if the executive director or his or her designee determines waiver to be in the public interest because providing the records primarily benefits the general public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712926

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: October 20, 1997

Proposal publication date: July 8, 1997

For further information, please call: (512) 463-8630



Chapter 23. Travel Information

Subchapter A. General Provisions

43 TAC §23.1, §23.2

The Texas Department of Transportation adopts amendments to §23.1 and §23.2 concerning purpose and definitions, and new §23.28, concerning distribution of subscriber and purchaser information. Sections 23.1, 23.2 and 23.28 are adopted without changes to the proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7479) and will not be republished.

Texas Civil Statutes, Article 6144e, recognizes the spirit of House Concurrent Resolution Number 26, passed by the 64th Legislature, which named Texas Highways the official travel magazine of Texas. House Bill 2220, 75th Legislature, 1997, amended Texas Civil Statutes, Article 6144e to require that the department adopt rules establishing policies relating to the release of subscriber or purchaser information, the use by the department of Texas Highways magazine subscriber and purchaser information, and the sale of a mailing list containing the names and addresses of subscribers or purchasers.

The amendments to §23.1 provide changes relating to the reorganization of the Travel and Information Division and reflect the recodification of transportation statutes by specifying the duties of the travel and information division, including litter reduction, highway beautification, and providing information on road conditions and Texas travel opportunities. The amendments to §23.2 provide definitions for terms and words used in §23.1 and new §23.28.

New §23.28 provides that the: information will be used for reader surveys, demographic profiles, marketing subscription or product offers, and to offset costs for Texas Highways magazine; the department may sell the mailing list for one-time use in accordance with industry practice and to ensure that only updated lists are used; and mailing list rates will be published on a continuing basis and based on the department's determination of fair-market value in accordance with industry practice. It also allows a subscriber or purchaser to ask that his or her name and address be removed from mailing list sales by letter or telephone call to Texas Highways magazine in order to prevent that subscriber or purchaser from receiving unwanted, unsolicited mailings and provides that Texas Highways magazine will include instructions concerning how to request removal of names and addresses from mailing list sales in each issue. The section provides the information may be disclosed to a governmental agency if the agency certifies in writing that the information is necessary for the performance of the agency.

No comments were received on the proposed amendments and new section.

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6144e, which provides the Texas Department of Transportation with the authority to publish Texas Highways magazine.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712927

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: October 20, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 463-8630



Subchapter C. Texas Highways Magazine

43 TAC §23.28

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6144e, which provides the Texas Department of Transportation with the authority to publish Texas Highways magazine.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712928

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: October 20, 1997

Proposal publication date: August 12, 1997

For further information, please call: (512) 463-8630



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

PROPOSED ACTION

The Commissioner of Insurance will hold a public hearing under Docket Number 2309 on December 3, 1997, at 10:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing the adoption of new rules in the Homeowners and Dwelling Sections of the Texas Personal Lines Manual to establish mandatory premium credits for residential property insurance policies for the installation of an impact resistant residential roof covering that meets Underwriters Laboratories (U.L.) Standard 2218 and the adoption of a form entitled "Impact Resistant Roofing Installation Information and Certification for Reduction in Residential Insurance Premiums" (Certificate of Installation) to be completed by the installer of a roof covering product on a residential risk or the general contractor supervising the construction or repair of a residential risk which meets the Underwriters Laboratories test criteria under U.L. Standard 2218. The rules and form proposed for adoption in the staff petition are necessary to implement the recommendations of the Residential Property Insurance Loss Mitigation Advisory Committee.

The petition requests consideration of the adoption of two new rules in the Texas Personal Lines Manual.

(1) In the Homeowners Section, staff proposes adding new rating rule VI-M, entitled "Mandatory Roof Covering Credits."

(2) In the Dwelling Section, staff proposes adding new rating rule VI-K, entitled "Mandatory Roof Covering Credits."

These rules specify the following standards and procedures that a residential property owner must meet in order to qualify for the credit:

(1) The replacement or new roof covering installed on the residence must be classified within one of the four impact resistance classifications specified in U.L. Standard 2218.

(2) The installer of a roof covering that meets U.L. Standard 2218 must provide the policyholder with a completed Certificate of Installation promulgated by the Texas Department of Insurance.

(3) The policyholder must present the Certificate of Installation, that has been completed and signed by the installer, and the roofing material packaging containing the Underwriters Laboratories label and manufacturer's name (packaging is only required for installations done prior to January 1, 1999) to the insurer for application of the mandatory credit.

(4) The proposed credits apply to all roof coverings that meet U.L. Standard 2218 other than metal roof coverings. Many metal roof coverings, which may meet U.L. Standard 2218 for impact resistance by withstanding a rupture of the roof membrane under test conditions, continue to suffer cosmetic damage in hail storms and would require replacement of the metal roof covering.

These rules provide mandatory premium credits of up to 35% for homeowners and up to 46% for dwelling policies for the installation of a roof covering that meets the classifications specified in U.L. Standard 2218. The amount of premium credit applied to a policy depends on the type of policy (homeowners or dwelling), the classification of the roof installed on the risk, and the rating territory in which the risk is located. The petition provides further details on staff's methods for determining the proposed mandatory credits.

The petition further requests the adoption of a Certificate of Installation form to be used by roofing contractors to certify that an impact resistant roof covering has been installed on a residence. Upon receiving the Certificate of Installation the homeowner may present the certificate along with any other required documentation to his insurer for application of the mandatory premium credit.

Commissioner's Order Number 94-1029 created the Residential Property Insurance Loss Mitigation Advisory Committee (Advisory Committee). The purpose of the Advisory Committee is to advise and make recommendations to the Commissioner of Insurance on reducing residential property insurance losses. The amount of losses paid is a vital factor in determining insurance rates. A significant reduction in the amount of losses paid will ultimately reduce residential property rates in Texas. In many instances, a significant percentage of the losses that occur could be prevented through efforts to improve factors that have a direct bearing on losses.

Prior to the establishment of the Advisory Committee, public hearings were held regarding the increasing losses from wind and hail, crime and freezing pipes. The purpose of the hearings was to allow public testimony concerning methods that could be used to help reduce the increasing losses in these areas. As a follow-up to the public hearings, the Advisory Committee was appointed to review the various methods suggested for reducing losses, as well as any other methods, and to make appropriate recommendations to the Commissioner for the implementation of such recommendations.

One of the Advisory Committee's recommendations concerns substantially reducing the losses from hail storms by improving the hail resistance of roof covering materials. Many areas in the State of Texas are exposed to severe hail storms causing hundreds of millions of dollars in damages and losses with roof coverings on residential risks sustaining the majority of the damage and loss. The severe hail storms which have occurred in recent years are causing an undesirable effect on the residential property insurance market in Texas. In the areas of Texas where hail damage occurs most frequently, residential property owners are having problems with obtaining residential property insurance from licensed insurers. This lack of availability compels consumers to seek insurance in the surplus lines market at much higher rates or to forego purchasing residential property insurance. Insurers are restricting their writings in the areas where hail occurs most frequently because in the event of a major hail storm their exposure of risk in these areas is too great. Excessive losses due to hail storms have caused increased rates for specific areas of Texas, and any continued pattern of hail storms causing severe damage will continue to produce increased insurance rates.

One solution to the problems created by increasing losses from hail storms is to reduce the losses that are caused by hail storms through the use of roofing materials that are more impact resistant than the roofing materials that are currently being used. The Advisory Committee has focused its review of mitigating losses to residential property in a number of areas, however, the single area that provides the greatest potential for corrective measures to mitigate losses is in the area of damage and loss from windstorms and hail storms. The component of a residential risk with the greatest exposure to hail damage is the roof covering. The more effective a roof covering product is in preventing a rupture of the roof membrane in a hail storm, the less damage the storm will cause.

There is a need to establish a system for grading the hail resistance of roof covering products, to provide incentives to consumers to purchase the more hail resistant roof covering products, and for manufacturers to produce such products. The first step in

this process is the establishment of a grading system to gauge the hail resistance of roof covering products, and this has been accomplished by the development of an impact resistance test by the Underwriters Laboratories known as U.L. Standard 2218. To ensure that manufacturers of roof covering products will manufacture products that meet such a test, it is important to provide consumers with incentives to purchase roof covering products meeting U.L. Standard 2218. The proposed new rules provide the incentives to consumers to purchase roof covering products that meet U.L. Standard 2218 by offering a premium credit on homeowners and dwelling policies that insure risks having a roof covering installed which meets U.L. Standard 2218.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.101, 5.96, and 5.98.

Copies of the full text of the staff petition and the proposed Manual rules and form are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Angie Arizpe at (512) 322-4147, (refer to reference number P-0997-30-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of the Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for the Property and Casualty Division, P. O. Box 149104, MC 103-1A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 1, 1997.

TRD-9713017

Carloine Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: October 1, 1997

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Figure for 40 TAC 700.1718(e)(2)(B)

<i>Type of Service</i>	<i>Maximum Payment</i>	<i>Required Documentation</i>
Placement Services	\$3,500	<ul style="list-style-type: none"> • The signed legal risk or adoption placement agreement, and
		<ul style="list-style-type: none"> • the legal risk or adoption services plan.
Postplacement Services	\$3,500	The adoption decree issued by the court.

Service Rendered	Charge
Standard-size paper copies (up to 8 1/2 inches H 14 inches): charge for 50 or fewer copies	\$ 0.10 per page (Each side of original document printed on both front and back considered a single copy for a total of \$.20)
Standard-size paper copies (up to 8 1/2 inches H 14 inches): charge for 50 or more copies	\$ 0.10 per page plus personnel and overhead charges
Paper copies produced on high-resolution color copier: charge for 50 or fewer copies	\$ 0.65 per page (Each side of original document printed on both front and back considered a single copy)
Paper copies produced on high-resolution color copier: charge for 50 or more copies	\$ 0.65 per page plus personnel and overhead charges
Charges for certified copies	Charges as applicable, plus \$1.00 for sealed certification page
Nonstandard-size paper copy	\$0.50 per page
Paper copy from microfilm or microfiche: standard size	\$0.10 per page
Paper copy from microfilm or microfiche: standard size, charge for 50 or more copies	\$0.10 per page plus personnel and overhead charges
Title and registration verification (record search)	\$2.30
Title history	\$5.75
Online access to motor vehicle records database	\$23.00 per month plus \$0.12 per record entry
Motor vehicle registration and title database	\$5,000 plus \$0.38 per 1,000 records copied to tape
Weekly updates to motor vehicle registration and title database -- requestor provides tape	\$125.00
Weekly updates to motor vehicle registration and title database -- tape provided by the department	\$135.00
Batch inquiry to motor vehicle records database	\$23.00 per computer run plus \$0.12 per record searched
Texas Highways Magazine mailing list	(See charges pursuant to \$23.28 of this title (relating to Distribution of Subscriber and Purchaser Information.)
Duplicate microfilm roll, 16mm	Actual cost (current Texas State Library charge; contact Records Management for cost and assistance).
Duplicate microfilm roll, 35mm	Actual cost (current Texas State Library charge; contact Records Management for cost and assistance).
Duplicate microfiche	Actual cost (current Texas State Library charge; contact Records Management for cost and assistance).
Duplicate microfilm jackets	Actual cost (current Texas State

Service Rendered	Charge
--600A	\$20.00 each
Tape cartridge	
--250MB	\$38.00 each
--525MB	\$45.00 each
VHS video cassette	\$2.50 each
Audio cassette	\$1.00 each
Other, including miscellaneous supplies, postage and shipping	Actual cost
Remote document retrieval charges	Actual cost
Computer resource charge (mainframe; prorated to actual time used; charges not assessed for printout time)	\$10.00 per minute
Computer resource charge (mid-size/mini; prorated to actual time used; charges not assessed for printout time)	\$1.50 per minute
Computer resource charge (client/server; prorated to actual time used; charges not assessed for printout time)	\$2.20 per hour
Computer resource charge (PC or LAN prorated to actual time used; charges not assessed for printout time)	\$1.00 per hour
Programming (time charge; to be prorated to actual time used)	\$26.00 per hour
Outside/Contracted Services	Actual Cost
Fax charges (local)	\$0.10 per page
Fax charges (long distance - same area code)	\$0.50 per page
Fax charges (long distance - different area code)	\$1.00 per page
Publication	Charge
County general highway maps (charges based on the sheet as a unit for all department maps). Colored maps available in selected counties only.	NOTE: Add sales tax on map items.
E full scale maps (36 H 50 inches: 1 inch = 1 mile)	\$1.79 per sheet
E half scale maps (18 H 25 inches: 1 inch = 2 miles)	\$0.32 per sheet
E half scale maps, color (18 H 25 inches: 1 inch = 2 miles)	\$0.50 per sheet
E quarter scale maps (10 H 14 inches: 1 inch = 4 miles)	\$0.18 per sheet
E quarter scale maps - color (10 H 14 inches: 1 inch = 4 miles)	\$0.28 per sheet
E bound quarter scale map book	\$29.81 per book
Official department state map: (3 H 3 feet: 1 inch = 22 miles)	\$1.10 each
Traffic maps: Half scale (18 H 25 inches)	

Service Rendered	Charge
only. E county traffic maps E district traffic maps E state traffic maps	\$0.32 per sheet \$0.32 per sheet \$1.00 each
State outline maps E 8 1/2 H 11 inches E 1 H 1 foot E 1 1/2 H 1 1/2 feet E 2 H 2 feet E 3 H 3 feet E 3 1/2 H 3 1/2 feet	\$0.12 \$0.27 \$0.39 \$0.51 \$1.79 \$1.79
Division manuals and subscription services: (Also available on an annual fee basis are subscription services to provide administrative documents pertaining to appraisal work and utility adjustment work performed for and by the department).	Charges based on cost of printing.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Friday, October 10, 1997, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Behavioral Enforcement Committee

AGENDA:

A. Investigations

1. File Number 97-06-08L
2. File Number 97-07-38L
3. File Number 97-07-20L
4. File Number 97-07-21L
5. File Number 97-05-15L
6. File Number 97-05-01L
7. File Number 97-05-17L
8. File Number 97-09-02L
9. File Number 97-08-02L
10. File Number 97-07-03L
11. File Number 97-07-16L
12. File Number 97-07-11L
13. File Number 97-06-22L
14. File Number 97-06-11L;
15. File Number 97-07-13L, 97-07-14L,, 97-07-15:

B. Discussion Items

1. Kenneth Eichner- Section 8
2. Arthur Greenspan-Advertising
3. Don Kinney- Independence

4. Martinez, Mendoza and Colmenero, P.C.-Independence

5. File Numbers 97-09-17L and 97-09-18L

6. Allan Ratafia- Section 8

7. Christian A. Rutledge- Competitive Bidding

8. James Schwartz- Section 501.40

9. Carl A. Searles- Independence

10. George Struve- Independence

C. Informal Conferences

1. File Number 97-02-02L- 9:00 a.m.; 2. File Number 97-04-04L- 10:00 a.m.; 3. File Number 97-05-02L-11:00 a.m. 4. File Number 97-03-26L- 1:00 p.m. ; 5. File Number 97-04-01L- 2:00 p.m.

Contact: Paul Gavia, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 305-7845.

Filed: September 29, 1997, 3:56 p.m.

TRD-9712921



State Office of Administrative Hearings

Tuesday, October 14, 1997, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Hearing on the Merits is scheduled for the above date and time in: SOAH Docket Number 473-97-1688-Petition of SOUTHWESTERN PUBLIC SERVICE COMPANY For Authority to Surcharge Under-Recoveries of Fuel Expenses and for a Related Good-Cause Waiver (PUC Docket Number 17410).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: September 30, 1997, 10:56 a.m.

TRD-9712942

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Texas Board or Architectural Examiners

Thursday, October 16, 1997, 8:30 a.m.

Hobby Building, 333 Guadalupe Street, Tower I, 12th Floor, Conference Room 1264

Austin

Personnel Committee Meeting

AGENDA:

I. Call to Order; II. Roll Call; III. Recognition of Guests; IV. Chairman's Opening Remarks; V. Consider/Act on Minutes; VI. Consider/Act on Personnel Issues; VII. Consider/Act on Public Comment; VIII. Chairman's Closing Remarks; IX. Adjournment.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Carolyn Lewis at (512) 305-8525 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Cathy L. Hendricks, P.O. Box 12337, Austin, Texas 78711-2337, (512) 305-8535.

Filed: October 1, 1997, 11:34 a.m.

TRD-9713027

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Thursday, October 16, 1997, 9:30 a.m.

Hobby Building, 333 Guadalupe Street, Tower I, 12th Floor, Conference Room 1264

Austin

Qualifications/Examination Committee Meeting

AGENDA:

I. Call to Order; II. Roll Call; III. Recognition of Guests; IV. Chairman's Opening Remarks; V. Consider/Act on Minutes; VI. Consider/Act on Qualification and Examination Issues; VII. Consider/Act on Public Comment; VIII. Chairman's Closing Remarks; IX. Adjournment.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Carolyn Lewis at (512) 305-8525 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Cathy L. Hendricks, P.O. Box 12337, Austin, Texas 78711-2337, (512) 305-8535.

Filed: October 1, 1997, 11:34 a.m.

TRD-9713028

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Thursday, October 16, 1997, 1:00 p.m.

Hobby Building, 333 Guadalupe Street, Tower I, 12th Floor, Conference Room 1264

Austin

Rules/Enforcement Committee

AGENDA:

I. Call to Order; II. Roll Call; III. Recognition of Guests; IV. Chairman's Opening Remarks; V. Consider/Act on Minutes; VI. Consider/Act on Rules/Enforcement Issues; VII. Review Proposed New Board Policy; VIII. Consider/Act on Public Comment; IX. Chairman's Closing Remarks; IX. Adjournment.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Carolyn Lewis at (512) 305-8525 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Cathy L. Hendricks, P.O. Box 12337, Austin, Texas 78711-2337, (512) 305-8535.

Filed: October 1, 1997, 11:34 a.m.

TRD-9713029

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Friday, October 17, 1997, 8:30 a.m.

Hobby Building, 333 Guadalupe Street, Tower I, 12th Floor, Conference Room 1264

Austin

Board Meeting

AGENDA:

I. Call to Order; II. Roll Call; III. Recognition of Guests; IV. Chairman's Opening Remarks; V. Consider/Act on Minute; VI. Consider/Act on Executive Director's Report; VII. Consider/Act on Issue Regarding Sidewalks as Part of the "Practice of Architecture"; VIII. Consider/Act on NCARB Resolution 97-13 Regarding Member Board Access to NCARB Council records; IX. Consider/Act on License Revocations; X. Consider/Act on Examinations; XI. Presentation on Electronic Technology; XII. Consider/Act on Board Policy Concerning Special Testing Considerations and Request Form; XIII. Consider/Act on Committee Recommendations; XIV. Consider/Act on Communications/Newsletter Committee Minutes for final Meeting on January 30, 1997; XV. Consider/Act on Conferences/Meetings; XVI. Consider/Act on Public Comment; XVII. Chairman's Closing Remarks; XVIII. Adjournment.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Carolyn Lewis at (512) 305-8525 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Cathy L. Hendricks, P.O. Box 12337, Austin, Texas 78711-2337, (512) 305-8535.

Filed: October 1, 1997, 11:34 a.m.

TRD-9713030

Texas State Board of Examiners of Professional Counselors

Thursday, October 9, 1997, 2:00 p.m.

Moreton Building, Room M-721, Texas Department of Health, 1100 West 49th Street

Austin

Complaints Committee

AGENDA:

The committee will discuss an possibly act on the surrender of professional counselor licenses of W.D.H., T.D.A, and R.K.; and review the list of disciplinary sanctions.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712968

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Friday, October 10, 1997, 8:30 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Testing and Continuation Education Committee

AGENDA:

The committee will discuss an possibly act on: requests relating to the licensed professional counselor examination from (Keith Burnett, Patricia Freeman, Hilario Garcia, Sandra Phares, and Danny Russell); review of statutory language requiring provisional license holders to take the examination; appointments to the Ad Hoc Examination Committee; and a request from James Kitchens, Professor, University of North Texas to allow the Texas licensed professional counselor examination to be given in Israel to graduates of the counselor education program at the Neve Yerashalayim College.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712969

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Friday, October 10, 1997, 10:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Rules Committee

AGENDA:

The committee will discuss an possibly act on: request for waiver of board rule 22 Texas Administrative Code (TAC) §861.82(f) concerning individual and group supervision; presentation relating to interactive video conferencing; and proposed amendments to 22 TAC, Chapter 681.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712970

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Friday, October 10, 1997, 11:30 a.m.

Exchange Building, Room N-218, Texas Department of Health, 8407 Wall Street

Austin

AGENDA:

There will be a brown bag luncheon while the board discusses the Diagnostic and Statistical manual of Mental Disorders, 4th Edition (DSM IV).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712971

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Friday, October 10, 1997, 1:00 p.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Public and Professional Relations Committee

AGENDA:

The committee will discuss and possibly act on approving topics for the April 1998 newsletter; and conference attendance.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712972

◆ ◆ ◆

Friday, October 10, 1997, 2:00 p.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Applications Committee

AGENDA:

The committee will discuss and possibly act on: applications or requests from applicants (Myrta Benkert, Elizabeth Ritz, Lawrence Rucker, Sammie Burkhead Smith, Michael Spain, Robert Wright, and Doris Wyman); and applicants graduating from a counselor education program offered at the Neve Yerushalayim College, Israel, in cooperation with the Sociology Department at the University of North Texas.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712973



Friday, October 10, 1997, 3:30 p.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Administration and Finance Committee

AGENDA:

The committee will discuss and possibly act on: review of board office operations including policies, procedures, and personnel (executive secretary's report); and finances (financial report, requests for conference attendance, and fee recommendations).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712974



Saturday, October 11, 1997, 9:00 a.m.

333 Guadalupe Street, Room 2-225

Austin

Board Meeting

AGENDA:

The board meeting will begin with announcements followed by discussion and possible action on: absent board members; reports from board members concerning conference attendance; approval of the minutes of the June 29, 1997, board meeting; acknowledgment of persons who wish to appear before the board; committee reports (Administration and Finance Committee (review of board office operations including policies, procedures, and personnel (executive secretary's report); finances (financial report, fee recommendations, and requests for conference attendance)); Applications Committee

(applications or requests from applicants Myrta Benkert, Elizabeth Ritz, Lawrence Rucker, Sammie Burkhead Smith, Michael Spain, Robert Wright, and Doris Wyman); and applicants graduating from a counselor education program offered at the Neve Yerushalayim College, Israel, in cooperation with the Sociology Department at the University of North Texas); Complaints Committee (surrender of professional counselor licenses (W.D.H., T.D.A. and R.K.); and a report from the June 14, 1997 and October 9, 1997 committee meetings); Testing and Continuing Education Committee (requests relating to the examination for licensure from (Keith Burnett, Patricia Freeman, Hilario Garcia, Sandra Phares, and Danny Russell); review of statutory language requiring provisional license holders to take the examination; appointments to the Ad Hoc Examination Committee; and a request from James Kitchens, Professor, University of North Texas to allow the Texas licensed professional counselor examination to be given in Israel to graduates of the counselor education program at the Neve Yerushalayim College); rules Committee (request for waiver of board rule 22 Texas Administrative Code (TAC) §681-82(f) concerning individual and group supervision; presentation relating to interactive video conferencing; and proposed amendments to 22 TAC, Chapter 681); and Public and Professional Relations Committee (topics for the April 1998 newsletter; and conference attendance)); pending and contemplated litigation in the Robert O'Neal lawsuit; consolidation of mental health boards; and other matters regarding the regulation of professional counselors requiring no board action.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712975



Saturday, October 11, 1997, 2:00 p.m.

333 Guadalupe, Room 2-225

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on the following complaints: 94-C058; 95-C018; 95-C034; 95-C040; 95-C050; 94-C058; 96-C009; 96-C017; 96-C019; 96-C022; 96-C027; 96-C030; 96-C038; 96-C039; 96-C040; 96-C060; 96-C061; 96-C062; 96-C063; 96-C066; 96-C071; 96-C077; 96-C081; 96-C088; 96-C094; 96-C100; 96-C113; 97-C005; 97-C010; 97-C013; 97-C035; 97-C038; 97-C039; 97-C040; 97-C042; 97-C043; 97-C046; 97-C047; 97-C048; 97-C051; 97-C052; 97-C055; 97-C056; 97-C060; 97-C061; 97-C070; 97-C071; 97-C073; 97-C074; 97-C075; 97-C077; 97-C078; 97-C079; 97-C080; 97-C083; 97-C084; 97-C085; 97-C086; 97-C087; 97-C088; 97-C089; 97-C090; 97-C091; 97-C092; 97-C093; 97-C094; 97-C095; 97-C096; 97-C097; 97-C098; 97-C099; 97-C100; 97-C101; 97-C102; 97-C103; 97-C104; 97-C105; 97-C106; 97-C107; 97-C108; 97-C109; 97-C110; 97-C111; 97-C112; 97-C113; 97-C114; 97-C115; 97-C116; 97-C117; 97-C118; 97-C119; 98-C001; 98-C002; 98-C003; 98-C004; 98-C005; and 98-C006.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: September 30, 1997 at 2:52 p.m.

TRD-9712976



Credit Union Department

Thursday, October 9, 1997, 2:00 p.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

Legislative Advisory Committee for the Credit Union Commission

AGENDA:

To Invite: Public input for future consideration. To Receive: Minutes of July 17, 1997 meeting; and the findings of the Legislative Implementation Task Force; To Consider: Taking formal action and vote to Recommend Action Regarding HB 1 (Appropriation Act), Article IX, §167- Review of Agency Rules; Taking formal action and vote to Recommend Action to the Credit Union Commission Regarding Rule or Policy Changes Necessitated by Legislation Passed during the 75th Legislature including (1) Criteria that must be considered in approving or disapproving a merger, (2) Recusal of Commission Members that have a Personal or Private Interest in a Measure, Proposal or Decision Pending before the Commission, (3) Methods by which Credit Union Members are Notified on the Name, Mailing Address, and Telephone Number of the Department for the Purpose of Directing Complaints to the Department, (4) Circumstances under which Meetings will be conducted to Accept Comment from Interested Parties that wish to Comment on Certain Applications, (5) Requirements or Restrictions on Lending Activity Secured by a Lien Authorized by §50(a)(6), Article XVI, Texas Constitution, if approved by voters; Taking formal action and vote to Recommend Approval by the Credit Union Commission of the Department's Course Outline for the new Commission Member Training Program; To Conduct: Discussion of Proposed Lending Guidelines for Credit Unions taking an Encumbrance against Homestead Property, if voters approve amendment to §50, Article XVI, Texas Constitution; Discussion of the Commission's 1997 Legislative Recommendations not enacted by the 75th Legislature; Establish date for next Committee Meeting.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Carol Shaner at (512) 837-9236.

Contact: Carol P. Shaner, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: September 29, 1997, 4:41 p.m.

TRD-9712931



Friday, October 10, 1997, 9:00 a.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

Commissioner Evaluation Committee for the Credit Union Commission

AGENDA:

To Invite: Public input for future consideration. To Consider: Taking formal action and vote to Recommend Approval by the Credit Union Commission of the Process and Timeline for Conducting the Commissioner's 1997 Performance Evaluation; and Establish Date for the Next Committee Meeting. To Conduct: Discussion of Personnel Issues including Renumeration of the Commissioner.

Contact: Carol P. Shaner, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: September 29, 1997, 4:53 p.m.

TRD-9712934



Friday, October 10, 1997, 10:00 a.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

Credit Union Commission

AGENDA:

To Invite: Public input for future consideration. To Receive: Minutes of July 18, 1997, Commission meeting; communications; and committee reports from the Texas Share Guaranty Credit Union (TSGCU) Oversight Committee, Legislative Advisory Committee, Commissioner Evaluation Committee and Field of Membership Committee; To Consider: Taking formal action and vote to Publish for Comment Proposed Amendment to Rule 91.705 Concerning Loans to Credit Union Officials; Taking formal action and vote to Approve the Department's Biennial Operating Plan for FY 1998-1999; Taking formal action and vote to Approve Department's Equal Employment Opportunity Policy (Affirmative Action Plan); Taking formal action and vote to Approve Department's public Interest Information Pamphlet; Taking formal action and vote to Approve Department's Policy on Access to Department Programs and Services by Non-English Speaking Persons; Taking formal action to vote and Amend Commission's Policies Manual regarding the Election of a Vice Chair; Taking formal action and vote to Elect a New Vice Chair to Serve until January, 1999; Taking formal action to vote and Publish for Comment Proposed Amendments to Rule 91.701; Taking formal action and vote to Approve Resolution of Appreciation for Former Commission Member; Taking formal action to establish January 16, 1998 as the tentative date for the next Commission's meeting; Discussion of Lending Authorized by §50(a)(6), Article XVI, Texas Constitution; Discussion of the Risk of Credit Unions not Carrying Director and Officer Liability Insurance; Discussion of the Staff Report on Credit Union Preparation for Year 2000; Discussion of Interpretation Request 97-1 Relating to Investment Limitations in 7 TAC §91.803; Discussion of Recent NASCUS Initiatives; To Conduct: An Executive session to review credit unions receiving special supervision and related concerns; to consult with legal counsel regarding contemplated legal actions, and existing litigation and administrative sanctions; and to discuss personnel matters.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72

hours prior to the designated time set for the meeting by contacting Carol Shaner at (512) 837-9236.

Contact: Carol P. Shaner, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: September 29, 1997, 4:41 p.m.

TRD-9712930



Texas Diabetes Council

Friday, October 10, 1997, 9:00 a.m.

Tower Building, Conference Room T-607, 1100 West 49th Street, Texas Department of Health

Austin

Industry Advisory Committee

AGENDA:

The committee will discuss and possibly act on: status reports (continuing medical education for physicians; town hall meetings; diabetes mobile van; and the diabetes tool kit); and public comments.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7490.

Filed: September 29, 1997, 3:56 p.m.

TRD-9712924



Friday, October 10, 1997, 10:00 a.m.

Tower Building, Conference Room T-607, 1100 West 49th Street, Texas Department of Health

Austin

Managed Care Work Group Committee

AGENDA:

The committee will discuss and possibly act on: algorithm for Type 2 Diabetes in diabetes management; presentations on (Acanthosis Nigricans and Diabetes; and minimum standards for children and adults with Type 1 Diabetes); status reports (continuing medical education for physicians; town hall meetings; and the diabetes mobile van); and public comments.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7490.

Filed: September 29, 1997, 3:56 p.m.

TRD-9712923



State Employee Charitable Campaign

Tuesday, October 28, 1997, 10:00 a.m.

2433 Ridgepoint Drive, Room 226

Austin

State Policy Committee

AGENDA:

1. Call to order
2. Review of minutes
3. State Advisory Committee Report
4. Comptroller's Report
5. State Campaign Manager Report
6. SCM Application Process
7. SAC and SPC Nominations Process
8. Officer's Reports
9. Chair's Report
10. Other Business
11. Adjourn

Contact: Mike Terry, 823 Congress Avenue, Suite 1103, Austin, Texas 78701, (512) 478-6601, fax: (512) 478-2572.

Filed: October 1, 1997, 11:08 a.m.

TRD-9713021



General Land Office

Tuesday, October 7, 1997, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Rooms 118, 119 and 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; Opening and consideration of bids received for the October 7, 1997, oil, gas and other minerals lease sale; pooling applications; Wildcat Field, Chambers Co. and Starr Co.; Giddings Austin Chalk-3, Robertson Co.; Deer Canyon (Penn and Strawn), Field, Terrell Co.; Gracey Ranch Field, Colorado Co.; Scott and Hopper Field, Brooks Co.; El Anzuelo Field, Kleberg Co.; coastal public lands- commercial easement renewals and amendments, Galveston Bay, Galveston Co.; Copano Bay, Aransas Co.; Neches River, Jefferson Co.; easement amendments, renewals and applications, Arroyo Colorado, Cameron Co.; Carancahua Bay, Calhoun Co.; West Bay, Galveston Co.; Laguna Madre, Cameron Co.; Mud Lake, Harris Co.; San Bernard River, Brazoria Col.; structure (cabin) permit amendments and renewals, Laguna Madre, Kenedy Co.; Laguna Madre, Wallacy Co.; Laguna Madre, Cameron Co.; Laguna Madre, Kleberg Co.; consideration of amendment to land transaction in Anderson Co., with Texas Parks and Wildlife Department, approved by SLB 9-16-1990; Executive Session and Open Session — approval of tracts, terms and conditions of a sealed bid land sale to be held on November 18, 1997; Executive and Open Session — consideration of potential sale, trade or purchase of land in Travis

co. relating to the acquisition of the Pease Mansion; Executive and Open Session — briefing on potential land sales, El Paso Co., other than Paseo Del Este, El Paso Co.; Executive and Open Session — sale of Paseo Del Este Property, El Paso Co.; review bid solicitation documents; consider authorizing solicitation of bids; Executive and Open Session — consideration of sale of Permanent School Fund lands, .81 acres, First and Trinity, Travis Co.; Executive and Open Session — consideration of audit compromise and settlement agreement between the State of Texas and Conoco, Inc. and associated waiver of penalties and interest; Executive and Open Session — status report, evaluation and analysis of the General Land Office's legal counsel regarding (i) potential, litigation of royalty under payment claims against TransTexas Gas Corporation and its successor lessees; and (ii) the ongoing settlement discussions regarding such claims; Executive and Open Session: status report, evaluation and analysis by the General Land Office's legal counsel regarding: (i) potential litigation of royalty under payment, Relinquishment Act violations and other claims against Chevron, U.S.A., Inc. and Pennzoil Exploration and (ii) the parties' prior settlement discussion regarding such matter; Executive Session- pending or contemplated litigation

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, Room 836, (512) 463-5016.

Filed: September 29, 1997, 3:36 p.m.

TRD-9712917

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Thursday, October 9, 1997, 3:30 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Veterans Land Board

AGENDA:

Approval of previous board meeting minutes; request by Larry C. Waldrop for reinstatement of eligibility to participate in the Veterans Land Program; consideration of forfeiture action on delinquent Veterans Land Program accounts; consideration of forfeiture action on Veteran Land Program accounts in property tax suits; staff reports.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, Room 836, (512) 463-5016.

Filed: September 29, 1997, 3:36 p.m.

TRD-9712920

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Texas Department of Health

Wednesday, October 8, 1997, 12:00 p.m.

Parkland Memorial Hospital, Meadows Building, Conference Room, 5171 Harry Hines Boulevard

Dallas

End Stage Renal Disease (ESRD) Task Force Operations Subcommittee

AGENDA:

The subcommittee will introduce members and guests and discuss and possibly act on: review of current rules (25 Texas Administrative

Code, Chapter 117) and standards related to operations regarding the use of physician extenders (physician assistants; advanced nurse practitioners; clinical nurse specialists; standardization of training for mechanical technicians; and water and reuse); setting of a tentative date for the next subcommittee meeting; and public comment (may be limited to three minutes per comment).

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: S. Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646.

Filed: September 30, 1997, 2:51 p.m.

TRD-9712966

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Thursday, October 9, 1997, 9:30 a.m.

Exchange Building, Room S402, Texas Department of Health, 8407 Wall Street

Austin

Informal Home and Community Support Task Force

AGENDA:

The task force will introduce members and guests and discuss and possibly act on: approval of the summary notes from the September 18, 1997 meeting; drafting of proposed rules concerning home and community support services agencies (25 TAC, Chapter 115); issues left pending at the September 18, 1997 meeting relating to addressing normal growth and development of a pediatric clinic in the personal assistance services category; other matters requiring no task force action; and public comment.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Veronda Durden, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6647.

Filed: September 30, 1997, 2:57 p.m.

TRD-9712977

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Friday, October 10, 1997, 9:00 a.m.

Austin Diagnostic Clinic, 12221 MoPac Expressway North, Classroom B

Austin

End Stage Renal Disease (ESRD) Task Force Ratios Subcommittee

AGENDA:

The subcommittee will introduce members and guests and discuss and possibly act on: review of current rules (25 Texas Administrative Code, Chapter 117) and standards in relation to the ratios of care givers to patients; setting of a tentative date for the next subcommittee meeting; and public comment (may be limited to three minutes per comment).

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: S. Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646.

Filed: September 30, 1997, 2:51 p.m.

TRD-9712967

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Tuesday, October 14, 1997, 9:30 a.m.

Texas Osteopathic Medical Association, 1415 Lavaca, (Corner of 15th and Lavaca)

Austin

Drug Use Review Board

AGENDA:

The board will discuss and possibly act on: approval of the minutes of the August 12, 1997 meeting; introduction of new board member, Perry Flowers, R.Ph., M.S.; assessment of the utilization services overview; data evaluations and revised criteria; update on the *H. pylori* Educational Project; H2 and related drugs expenditure data; pilot project on Diabetes self-management; on-line prospective Drug Use Review (DUR) Reports; selection of targeted drugs for next profiles; and the scheduling of the next meeting of the board.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Curtis Burch, 1100 West 49th Street, Austin, Texas 78756, (512) 219-5001, extension 238.

Filed: September 29, 1997, 3:56 p.m.

TRD-9712922

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Texas Higher Education Coordinating Board

Thursday, October 16, 1997, 8:30 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive

Austin

Research Committee

AGENDA:

Consideration of grants to be awarded under the 1997 Advanced Research Program and Advanced Technology Program.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:10 a.m.

TRD-9712996

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Thursday, October 16, 1997, 9:00 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive

Austin

Access and Equity Committee

AGENDA:

Report on minority enrollment in Texas public law schools and medical schools and selected universities.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:11 a.m.

TRD-9712997

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Thursday, October 16, 1997, 9:30 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive

Austin

Community and Technical Colleges Committee

AGENDA:

Consideration of matters relating to community and technical colleges.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:12 a.m.

TRD-9712998

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Thursday, October 16, 1997, 10:15 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive

Austin

Universities Committee

AGENDA:

Consideration of matters relating to universities.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:21 a.m.

TRD-9712999

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Thursday, October 16, 1997, 11:00 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive

Austin

Coordinating Board Meeting

AGENDA:

Public hearing and consideration of the issuance of State of Texas College Student Loan Bonds, Series 1997, in the aggregate principal amount of \$75,000,000.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:24 a.m.

TRD-9713000

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Thursday, October 16, 1997, 11:30 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700
Chevy Chase Drive

Austin

Health Affairs Committee

AGENDA:

Consideration of proposing amendments to rules for the Family Practice Residency Program to incorporate public health rotations into the program (Chapter 13, Subchapter D); Consideration of proposing rules for allocating funds appropriated for the Graduate Medical Education Program (Chapter 13, Subchapter E); and Consideration of approval or reapproval of Mission Statement and Table of Programs-Texas A&M University System-Baylor College of Dentistry and Lamar University.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:25 a.m.

TRD-9713001

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Thursday, October 16, 1997, Noon.

Chevy Chase Office Complex, Building One, Room 1.102, 7700
Chevy Chase Drive

Austin

Board

AGENDA:

The Board will meet in executive session to discuss pending or contemplated litigation.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:26 a.m.

TRD-9713002

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Thursday, October 16, 1997, 1:00 p.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700
Chevy Chase Drive

Austin

Special Committee on Texas Chiropractic College

AGENDA:

Consideration of whether there is a compelling public need or compelling state interest to establish Texas Chiropractic College as a public institution of higher education in accordance with House Bill 621.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:28 a.m.

TRD-9713003

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Thursday, October 16, 1997, 1:45 p.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700
Chevy Chase Drive

Austin

Campus Planning Committee

AGENDA:

Consideration of matters relating to campus planning.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:29 a.m.

TRD-9713004

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Thursday, October 16, 1997, 2:30 p.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700
Chevy Chase Drive

Austin

Administration and Financial Planning Committee

AGENDA:

Consideration of matters relating to administration and financial planning.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:30 a.m.

TRD-9713005

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Thursday, October 16, 1997, 3:00 p.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700
Chevy Chase Drive

Austin

Student Services Committee

AGENDA:

Consideration of matters relating to student services.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.

Filed: October 1, 1997, 9:31 a.m.

TRD-9713006

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Friday, October 17, 1997, 8:30 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700
Chevy Chase Drive

Austin

Coordinating Board

AGENDA:

Approval of Minutes of July 17, 1997 meeting; Resolutions by the Board, Consideration of matters relating to the Committee on Research; the Committee on Access and Equity; the Committee on Community and Technical Colleges; the Committee on Universities; the Committee on Health Affairs; the Special Committee on Texas Chiropractic College; the Committee on Campus Planning; the Committee on Administration and Financial Planning; the Committee on Student Services; and Reports to the Board.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6101.
Filed: October 1, 1997, 9:31 a.m.

TRD-9713007



Texas Historical Commission

Friday, October 10, 1997, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 119

Austin

Advisory Board of the Texas Preservation Trust Fund

AGENDA:

- 1) Opening Remarks/Introductions
- 2) THC Staff Briefing on FY 1998, Grant Program
- 3) Review of Texas Preservation Trust Fund Grant Applications for Fiscal Year 1998
- 4) Future Trust Fund Activities
- 5) Closing Announcements

Contact: Stan Graves/Lisa Harvell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: September 30, 1997, 2:49 p.m.

TRD-9712952



Texas Commission on Human Rights

Thursday, October 9, 1997, 9:00 a.m.

Texas Commission on Human Rights' Offices, 6330 Highway 290 East, Third Floor Conference Room

Austin

AGENDA:

Executive Session/Commissioner Panels Pursuant to Texas Government Code, §551.071; Item(s) Covered in Executive Session; Welcoming of Guests; Minutes; Administrative Reports; Discussion of Audit and Implementation of Recommendations; Initial Preparation of Material for the Sunset Advisory Commission; Personnel Manual Changes; EEOC Contract; HUD Contract; Travel Requirements as Authorized by the 1998-1999 Appropriations Act; EEO Riders in the 1998-1999 Appropriations Act; FHIP Proposal Submitted to HUD; Hate Crimes Conference Sponsored by The White House; Vacant Staff Position; EEO Compliance Training; EEOC Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment; Commissioner Correspondence;

Commissioner Issues; Unfinished Business. All Items on the Agenda May be Subject to a Vote, if Appropriate.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 437-3450.

Filed: September 29, 1997, 2:19 p.m.

TRD-9712914



Texas Department of Information Resources

Thursday, October 16, 1997, 9:30 a.m.

William P. Clements Building, Fifth Floor, Room 5, 300 West 15th Street

Austin

Board

AGENDA:

Call to Order, Roll Call and Witness Registration

1. Adopt August 28, 1997 Meeting Minutes
 2. Approve rules for digital signatures for publication in Texas Register
 3. Approve rules regarding complaint process method for publication in the Texas Register
 4. Approve rules regarding standards for utilizing videoconferencing for agencies' board meetings for publication in the Texas Register
 5. Approve State Strategic Plan for Information Resources Management
 6. Discussion of Austin Disaster Recovery and Operations Center
 7. Update on geographic information systems project
 8. Update on West Texas Disaster Recovery and Operations Center
 9. Fiscal Year 1997 Financial Forecast Update
 10. Discussion of Internal Audit of Cooperative Contracts Division
- Adjournment

Contact: Martha Zottarelli, 300 West 15th Street, Suite 1300, Austin, Texas, 78701, (512) 475-2153.

Filed: September 30, 1997, 11:02 a.m.

TRD-9712943



Texas Department of Insurance

Wednesday, October 1, 1997, 4:00 p.m.

333 Guadalupe, Tower I, Room 1340B

Austin

EMERGENCY MEETING AGENDA:

Docket Number 2279: In the Matter of Title Insurance Rates, Motion to Permit Late Filing of Direct testimony or Alternative Motion to Amend Scheduling Order.

REASON FOR EMERGENCY: A motion for extension of filing deadlines and responses and objections thereto, which was filed with

the Texas Department of Insurance one day before the deadline for prefiling direct testimony and exhibits, and which created an unforeseeable situation on the part of the agency, requires prompt action by the agency.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 1, 1997, 11:24 a.m.

TRD-9713025

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Boards for Lease of State-owned lands

Tuesday, October 7, 1997, 2:45 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 833

Austin

Board for Lease of Texas Department of Criminal Justice

AGENDA:

Approval of previous board meeting minutes; consideration of bids received for the October 7, 1997 oil, gas and other minerals lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 29, 1997, 3:36 p.m.

TRD-9712918

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Tuesday, October 7, 1997, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 833

Austin

Board for Lease of Texas Parks and Wildlife Department

AGENDA:

Approval of previous board meeting minutes; easement renewal application, Buescher State Park, Bastrop County, consideration of bids received for the October 7, 1997 oil, gas and other minerals lease sale;

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 29, 1997, 3:36 p.m.

TRD-9712919

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Texas Natural Resource Conservation Commission

Monday, November 10, 1997, 9:00 a.m.

101 East Main Street

Robstown

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by TEXAS ECOLOGISTS, INC. to renew and amend Permit Number HW-50052-001 and Compliance Plan Number CP-50052-001. The permit renewal will authorize the continued operation of an industrial solid waste storage, processing, and disposal facility for the management of hazardous and Class 1, Class 2, and Class 3 non-hazardous wastes. The authorized waste management units consist of six existing landfill cells, thirteen existing tanks, and two existing container storage areas. The major amendment to the permit will authorize the addition of one proposed landfill with seventeen subcells (maximum capacity of 3,100,000 cubic yards) and one proposed contained storage area (maximum capacity of 80,780 gallons) and will authorize the Waste Stabilization Building as a containment building. The compliance plan renewal will authorize continued remediation of contaminated ground water, including ground-water monitoring to measure the effectiveness of the Corrective Action Program. The major amendment to the compliance plan will authorize a more specific ground-water sampling program for the purpose of better characterizing the nature of the contaminant plume. Texas Ecologists, Inc. is a commercial industrial and hazardous waste facility. Wastes are generated on-site and received from off-site sources. The facility is located on a 240 acre tract of land on Petronila Road, approximately 0.5 miles southeast of the intersection of Farm Road 2826 and Petronila Road and approximately 3.5 miles south of Robstown, Nueces County, Texas. SOAH Docket Number 582-97-1119.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: October 1, 1997, 8:33 a.m.

TRD-9712992

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Tuesday, November 25, 1997, 9:00 a.m.

East Montgomery County Courthouse, 1035 South Highway 59

New Caney

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by MCNICK RECYCLING, INC. for issuance of proposed Air Permit Number 31596 to authorize construction of a used oil filter processing facility location approximately 500 feet west of Highway 59 and approximately 600 feet north of Route 2, McCleskey Road, in Montgomery County, Texas. SOAH Docket Number 582-97-0716.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: September 26, 1997, 11:21 a.m.

TRD-9712818

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Texas Board of Private Investigators and Private Security Agencies

Friday, October 10, 1997, 10:00 a.m.

John H. Reagan Building, Room 101, 105 West 15th Street

Austin

Board Meeting

AGENDA:

Old Business

I. Approval of Minutes of September 9, 1997 Board Meeting.

II. Approval of Minutes of September 29, 1997 Board Meeting

III. Executive Session to Consider, Review, Discuss, and Evaluate the Applications Received and the Applicants for the Executive Director Position and the Possible Appointment of an Executive Director Pursuant to §551.074, Texas Government Code.

IV. Return to Open Session for Further Consideration, Review, Discussion, Evaluation or Action on the Applications Received and the Applicants for the Executive Director Position and the Possible Appointment of an Executive Director Pursuant to §551.074, Texas Government Code.

V. Consideration, Discussion and Possibly Act Regarding the Current and Pending Contracts for Professional Services Agreement of Porterfield and Associates.

New Business

I. Comments and Observations by the Newly Appointed Executive Director.

II. Consideration, Discussion and Possible Board Action Regarding Personnel Hired.

Contact: Larry Shimek, 105 West 15th Street, Austin, Texas, 78711, (512) 463-5545.

Filed: October 1, 1997, 11:07 a.m.

TRD-9713020

Texas Property and Casualty Insurance Guaranty Association

Thursday, October 9, 1997, 9:00 a.m.

9420 Research Boulevard, Echelon III, Suite 400

Austin

Board of Directors

AGENDA:

The Texas Property and Casualty Insurance Guaranty Association Board of Directors will meet to call the meeting to order, read the Antitrust Statement, hear public participation, approve minutes of the August 14, 1997 Board Meeting, Action Items- discuss and take possible action on the following: A. Finance and Audit Committee Report, B. Nominations Committee Report, 1. Executive Officers Nomination, 2. Insurance Industry Member Election; Informational Items: A. Personnel Committee Report, 2. Executive Committee Report, 3. Claims and Legal committee Report; Executive Session-A. Regulators/Conservator's Report, B. Attorney's Report, C. Personnel Issues; and Discuss and take possible action on the items considered in Executive Session.

Contact: Marvin Kelly, 9420 Research Boulevard, Echelon III, Suite 400, Austin, Texas 78759, (512) 345-9335.

Filed: October 1, 1997, 9:46 a.m.

TRD-9713012

Public Utility Commission of Texas

Wednesday, October 8, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration and possible action regarding: Docket Number 14965--Application of Central Power and Light Company for Authority to Change Rates.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7308.

Filed: September 30, 1997, 4:31 p.m.

TRD-9712989

Railroad Commission of Texas

Tuesday, October 7, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

REVISED AGENDA:

1. Consideration of Responses to Offers on Year 2000 contract programming services for fiscal year 1998 (as previously authorized) and action thereon as appropriate including awarding of bids.

2. Consideration and approval of Guidelines for Internet Site Linkages.

3. State of Texas v. Robert M. Foley, doing business as F&F Materials Company, Number 03-96-00673-CV, in the Texas Court of Appeals, Third District, at Austin, and related cases previously referred to the Attorney General for enforcement.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711-6927, (512) 463-7033.

Filed: September 29, 1997, 3:36 p.m.

TRD-9712916

Texas Savings and Loan Department

Thursday, October 30, 1997, 9:00 a.m.

2601 North Lamar Boulevard, Third Floor, Finance Commission Building

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from Bowie State Bank to convert to a state savings bank to be named Franklin Bank, S.S.B, to relocate its home office to 3720 Jefferson Street, Austin, Travis County, Texas, and to establish a branch at 200 West Walnut, Bowie, Montague County, Texas, its current home office, from which

record the Commission will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: September 29, 1997, 4:03 p.m.

TRD-9712925



Texas Title Insurance Guaranty Association

Tuesday, October 14, 1997, 10:00 a.m.

333 Guadalupe Street, Commissioner's Conference Room 1264, Twelfth Floor

Austin

Board of Directors

AGENDA:

I. Call Meeting to Order

II. Approval of Minutes From July 8, 1997 Board of Directors Meeting

III. Financial Report- Marvin Coffman

IV. Special Deputy Receiver's Report-Ed Engleking

V. Title Examiner's Report- Ethel Benedict

VI. Conservator's Report- Neal Rockhold

VII. Counsel's Report Including Report on Procedures and Guidelines for Contracts- Burnie Burner

VII. Appointment of Nominating Committee for Officers for 1998

IX. Set Date and Time for Next Meeting (January 13, 1998)

X. Adjourn

Contact: September 30, 1997, 2:39 p.m.

Filed: Burnie Burner, 301 Congress Avenue, Suite 800, Austin, Texas 78701, (512) 474-1587.

TRD-9712951



Texas Workforce Commission International Association of Personnel in Employment Security

Thursday, October 16, 1997, 1:00 p.m.

Doubletree Hotel, 6505 North IH35

Austin

Educational Conference

AGENDA:

Welcoming remarks to include the objectives and successes of the Texas Workforce Commission from:

Bill Hammond, Chairman; Commissioner Representing Employers Diane Rath, Commissioner Representing the Public; T.P. O'Mahoney, Commissioner Representing Labor.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: September 30, 1997, 4:20 p.m.

TRD-9712982



Friday, October 17, 1997, 8:00 a.m.

Doubletree Hotel, 6505 North IH35

Austin

Educational Conference

AGENDA:

Welcoming remarks on the Texas Workforce Commission's successes and recognition of the individual achievements that are in part responsible for the successes.

Bill Hammond, Chairman; Commissioner Representing Employers; Diane Rath, Commissioner Representing the Public; T.P. O'Mahoney, Commissioner Representing Labor.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: September 30, 1997, 4:20 p.m.

TRD-9712983



Regional Meetings

Meetings filed September 29, 1997

Central Texas Council of Governments, Executive Committee Officers, met at 302 East Central Avenue, Belton, September 30, 1997, at 11:00. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (254) 939-1801. TRD-9712929.

Concho Valley Workforce Development Board, met at ASU Lake House, Beaty Road, San Angelo, October 9, 1997, 9:30 a.m. Information may be obtained from Judge Sidney Mabry, P.O. Box 770, Mertzon, Texas 76941. (915) 835-4361. TRD-9712932.

Meetings filed September 30, 1997

Capital Area Planning Council, Executive Committee, met at 2520 IH35 South, Suite 100, Austin, October 8, 1997 at 10:00 a.m. Information may be obtained from Betty Voights, 2512 south IH35, Suite 220, Austin, Texas 78704, (512) 443-7653. TRD-9712941.

District Judges Meeting, 36th, 156th and 343rd District Courts, met at 400 West Sinton Street, Sinton, October 3, 1997 at 11:00 a.m. Information may be obtained from Joel B. Johnson, P.O. Box 1568, Beeville, Texas 78104, (512) 364-6262. TRD-9712939.

East Texas Council of Governments, Workforce Development Board-Governance Task Force, met at 3800 Stone Road, Kilgore, October 6, 1997 at 2:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9712980.

Middle Rio Grande Development Council, Texas Review and Comment System Committee, met at Uvalde Operations Conference Room, 209 North Getty, Uvalde, October 3, 1997 at 4:00 p.m. Information may be obtained from Tammye Carpinteyro, 209 North Getty Street, Uvalde, Texas 78801, (830) 278-4151, fax; (830) 278-2929. TRD-9712935.

San Antonio-Bexar County Metropolitan Planning Organization, Technical Advisory Committee, met at 233 North Pecos, Fourth Floor Conference Room, Bexar County Public Works, San Antonio, October 3, 1997 at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9712940.

San Patricio Appraisal District, Board of Directors, met at 1146 East Market, Sinton, October 9, 1997 at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9712978.

Tyler County Appraisal District, Board of Directors, will meet at 806 West Bluff, Woodville, October 14, 1997 at 10:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9712979.

Meetings filed October 1, 1997

Comal Appraisal District, Appraisal Review Board, will meet at 178 East Mill Street, #102, New Braunfels, October 15, 1997 at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222; (830) 625-8597. TRD-9713018.

Creedmoor MAHA Water Supply Corporation, Board, met at 1699 Laws Road, Mustang Ridge, October 8, 1997 at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Mustang Ridge, Texas 78610, (512) 243-2113. TRD-9713011.

Dallas Housing Authority, Board of Commissioners, met at Melrose Hotel, 3015 Oaklawn Avenue, Dallas, October 9, 1997 at 8:00 a.m. Information may be obtained from Betsy Horn, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951-8302. TRD-9713033.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary's Street, San Antonio, October 6, 1997 at 5:00 p.m.

Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9713026.

Fort Bend Parkway Association Board, will meet at 1522 Texas Parkway (City Hall Complex), Committee Center Room 201, Missouri City, October 13, 1997 at 6:00 p.m. Information may be obtained from Robert R. Randolph, 2701 First City Tower, 1001 Fannin, Houston, Texas 77002-6760, (713) 758-2380. TRD-9713019.

Hickory Underground Water Conservation District Number One, Board and Advisors, met at 2005 South Bridge, Brady, October 9, 1997 at 7:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9713036.

North Central Texas Council of Governments, North Central Texas Workforce Board Program Coordination Committee, met at 616 Six Flags Drive, Suite 200, Arlington, Texas October 10, 1997 at 9:00 a.m. Information may be obtained from Casandra Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9713015.

Permian Basin Regional Planning Commission, Board of Directors, met at 920 Golf Course Road, Andrews, October 9, 1997 at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9713031.

Sulphur- Cypress SWCD, #419, met at 1809 West Ferguson, Mt. Pleasant, October 8, 1997 at 9:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson Road, Suite D, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9712991.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of September 23, 1997, through September 30, 1997:

FEDERAL AGENCY ACTIONS:

Applicant: Texas Eastern Transmission Corporation; Location: Line 16-I-2 and Line 16-I-3 Pipeline, Nueces County, Texas; Project Number: 97-0326-F1; Description of Proposed Action: The applicant proposes to cap and abandon 8,600 feet of four-inch pipeline at Line 16-I-2, and 4,500 feet of four-inch pipeline at Line 16-I-3. Each of the four tie-ins will be excavated within the existing right-of-way. The above-ground piping will be cut and removed. The pipeline will be capped and filled with 50psig of nitrogen and reburied in place. Preconstruction contours will be restored and each location reseeded and stabilized.

Applicant: Texas Eastern Transmission Corporation; Location: Line 16-DD and Line 16-DD-1 Pipeline, Refugio County, Texas; Project Number: 97-0327-F1; Description of Proposed Action: The applicant proposes to cap and abandon 1,000 feet of three-inch pipeline at Line 16-DD, and 1,500 feet of two-inch pipeline at Line 16-DD-1. Each of the four tie-ins will be excavated within the existing right-of-way. The above-ground piping will be cut and removed. The pipeline will be capped and filled with 50psig of nitrogen and reburied in place. Preconstruction contours will be restored and each location reseeded and stabilized.

Applicant: Texas Eastern Transmission Corporation; Location: Line Number 14, Milepost 5.86, Vidor Discharge, Orange County, Texas;

Project Number: 97-0328-F1; Description of Proposed Action: The applicant proposes to install a 12-inch hot tap on its existing 30-inch natural gas pipeline (Line Number 14) in Orange County, Texas for the purpose of receiving up to 200 mmcf. Construction activities will include the installation of a hot tap valve and EGM at milepost 5.86, within the Vidor Station yard.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on October 1, 1997.

TRD-9712994

Garry Mauro

Chairman

Coastal Coordination Council

Filed: October 1, 1997



Office of the Consumer Credit Commissioner

Notice of Rate Ceiling

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Articles 1D.003 and 1D.005, as amended (Texas Civil Statutes, Articles 5069-1D.003 and 1D.005) and Texas Finance Code, §346.101.

[graphic]

Issued in Austin, Texas, on September 30, 1997.

TRD-9713010

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 1, 1997



State Board for Educator Certification

Request for Application Concerning Centers for Professional Development of Teachers - Phase 18

Filing Date.

Filing Authority. This Request for Application (RFA) #705-98-002 is authorized under Texas Education Code, §21.047, Centers for Professional Development of Teachers.

Eligible Applicants. All institutions of higher education (IHEs) with approved programs, in collaboration with other institutions of higher education with approved teacher education programs, ISDs, ESCs, and other entities or businesses, who have not received previous funding for this purpose (except for planning grants) are eligible to apply.

Description. The purpose of these grants is to implement a strategic plan of action for the establishment of centers for professional development of teachers. The primary purpose of the centers will be to integrate technology and innovative teaching practices into the preservice and staff development training of public school teachers and administrators to meet the needs of the youth of Texas.

Dates of Project. The Centers for Professional Development of Teachers-Phase 18 will begin implementation during the 1997-1998 school year. Implementation must be completed by August 31, 2000. Applicants should plan for a starting date of Monday, January 12, 1998, and an ending date of no later than Monday, August 31, 1998, for the first of three possible grants.

Project Amount. Funding will be made on the merits of the applications submitted in accordance with program, activities, and services as outlined in 19 TAC 230.121(a)(b) and (f), and Sections V, VI, and VII of the RFA.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all the requirements contained in the RFA. All applications must be collaboratively developed with public school districts, ESCs, IHEs, and other entities or businesses. The SBEC reserves the right to select from the highest ranking applications that: emphasize systemic change that will have a substantial impact on teacher preparation and student learning; focus on the capacity of a center to integrate technology applications for teachers and students; have the potential to assess how the various technologies are intended to function in educational settings; and possess the capacity to incorporate innovative teacher practices to improve the quality and the product of teacher preparation programs in Texas.

The SBEC is not obligated to approve an application, provide funds, or endorse any application that is submitted in response to this RFA. This RFA does not commit SBEC to pay any costs incurred before an application is approved. The issuance of this RFA does not obligate SBEC to award a grant or to pay any costs incurred in the preparation of a response.

Requesting the Application. A complete copy of RFA #705-98-002 may be obtained by writing the: State Board for Educator Certification, Contract and Grant Administration, Teacher Retirement System Building, 1001 Trinity, Austin, Texas 78701-2603, or by calling (512) 469-3000. Please refer to RFA #705-98-002 in your request.

Further Information. For clarifying information about this RFA, contact Contract & Grant Administration, State Board for Educator Certification, (512) 469-3000.

Deadline for Receipt of Applications. The deadline for receiving an application in the SBEC Contract & Grant Administration is 3:00 p.m., Friday, December 19, 1997.

Issued in Austin, Texas, on October 1, 1997.

TRD-9713032
Mark Littleton
Executive Director
State Board for Educator Certification
Filed: October 1, 1997

Texas Department of Information Resources

Invitation to Negotiate

The Texas Department of Information Resources (DIR) is issuing an Invitation to Negotiate (ITN) for the Texas Orthoimagery Program (TOP) - West Texas Project. DIR seeks to obtain through this contract 1:12,000 scale, 3.75 X 3.75, minute color infrared (CIR) digital orthophoto quarter quads (DOQs) and Level 2 digital elevation models (DEMs) by 7.5 minute quadrangle and associated support services, in accordance with the provisions of Chapter 2254 of the Government Code.

The vendor will oversee all aspects of project and production management. The vendor or team of vendors sought for this project will provide a "turnkey" type of approach for the following products: conversion of color infrared National Aerial Photography Program prints into digital orthophoto quarter quads, development of Level 2 digital elevation models, when needed, media and projection conversion services, special product development, duplication services, distribution services, customer outreach services, customer support services.

This procurement will be a state catalog purchase. Vendors must be designated as a Qualified Information Systems vendor by the Texas General Services Commission (GSC) with approved DOQ and DEM products on the catalog prior to the conclusion of contract negotiations. All interested parties are invited to submit a written statement of qualifications and project approach to DIR. A complete copy of the ITN may be obtained by contacting Bill Miller, Contracts and Purchasing Manager, Texas Department of Information Resources, P. O. Box 13564, Austin, Texas 78711-3564, (512) 463-3358, e-mail: bill.miller@dir.state.tx.gov. Interested parties may also obtain a copy of the detailed Invitation to Negotiate (ITN) by contacting the DIR Technology Information Center at (512) 475-4790 or by downloading it from the world wide web. Address: www.state.tx.us/top_itn.

Vendors providing written responses to the ITN should provide DIR with six copies. Written responses to the invitation to negotiate must be submitted by prospective vendors no later than 11:00 a.m. on Monday, October 27, 1997. Responses will be time and date stamped. Vendors submitting written responses after the due date will be deemed unresponsive without exception. Written responses should be addressed to: Bill Miller, Contracts and Purchasing Manager, Texas Department of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78701.

Those vendors whose qualifications and project approach most closely meet the needs outlined in the ITN will be invited to submit additional information. The determination of the most qualified vendor and award of contract shall be at the sole discretion of the Department of Information Resources.

Issued in Austin, Texas, on October 1, 1997.

TRD-9712993
C.J. Brandt, Jr.

General Counsel
Texas Department of Information Resources
Filed: October 1, 1997

Texas Department of Insurance

Notices of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2309 on December 3, 1997, at 10:00 a. m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing the adoption of new rules in the Homeowners and Dwelling Sections of the Texas Personal Lines Manual to establish mandatory premium credits for residential property insurance policies for the installation of an impact resistant residential roof covering that meets Underwriters Laboratories (U.L.) Standard 2218 and the adoption of a form entitled "Impact Resistant Roofing Installation Information and Certification for Reduction in Residential Insurance Premiums" (Certificate of Installation) to be completed by the installer of a roof covering product on a residential risk or the general contractor supervising the construction or repair of a residential risk which meets the Underwriters Laboratories test criteria under U.L. Standard 2218. The rules and form proposed for adoption in the staff petition are necessary to implement the recommendations of the Residential Property Insurance Loss Mitigation Advisory Committee.

The petition requests consideration of the adoption of two new rules in the Texas Personal Lines Manual.

- (1) In the Homeowners Section, staff proposes adding new rating rule VI-M, entitled "Mandatory Roof Covering Credits."
- (2) In the Dwelling Section, staff proposes adding new rating rule VI-K, entitled "Mandatory Roof Covering Credits."

These rules specify the following standards and procedures that a residential property owner must meet in order to qualify for the credit:

- (1) The replacement or new roof covering installed on the residence must be classified within one of the four impact resistance classifications specified in U.L. Standard 2218.
- (2) The installer of a roof covering that meets U.L. Standard 2218 must provide the policyholder with a completed Certificate of Installation promulgated by the Texas Department of Insurance.
- (3) The policyholder must present the Certificate of Installation, that has been completed and signed by the installer, and the roofing material packaging containing the Underwriters Laboratories label and manufacturer's name (packaging is only required for installations done prior to January 1, 1999) to the insurer for application of the mandatory credit.
- (4) The proposed credits apply to all roof coverings that meet U. L. Standard 2218 other than metal roof coverings. Many metal roof coverings, which may meet U.L. Standard 2218 for impact resistance by withstanding a rupture of the roof membrane under test conditions, continue to suffer cosmetic damage in hail storms and would require replacement of the metal roof covering.

These rules provide mandatory premium credits of up to 35% for homeowners and up to 46% for dwelling policies for the installation of a roof covering that meets the classifications specified in U.L.

Standard 2218. The amount of premium credit applied to a policy depends on the type of policy (homeowners or dwelling), the classification of the roof installed on the risk, and the rating territory in which the risk is located. The petition provides further details on staff's methods for determining the proposed mandatory credits.

The petition further requests the adoption of a Certificate of Installation form to be used by roofing contractors to certify that an impact resistant roof covering has been installed on a residence. Upon receiving the Certificate of Installation the homeowner may present the certificate along with any other required documentation to his insurer for application of the mandatory premium credit.

Commissioner's Order Number 94-1029 created the Residential Property Insurance Loss Mitigation Advisory Committee (Advisory Committee). The purpose of the Advisory Committee is to advise and make recommendations to the Commissioner of Insurance on reducing residential property insurance losses. The amount of losses paid is a vital factor in determining insurance rates. A significant reduction in the amount of losses paid will ultimately reduce residential property rates in Texas. In many instances, a significant percentage of the losses that occur could be prevented through efforts to improve factors that have a direct bearing on losses.

Prior to the establishment of the Advisory Committee, public hearings were held regarding the increasing losses from wind and hail, crime and freezing pipes. The purpose of the hearings was to allow public testimony concerning methods that could be used to help reduce the increasing losses in these areas. As a follow-up to the public hearings, the Advisory Committee was appointed to review the various methods suggested for reducing losses, as well as any other methods, and to make appropriate recommendations to the Commissioner for the implementation of such recommendations.

One of the Advisory Committee's recommendations concerns substantially reducing the losses from hail storms by improving the hail resistance of roof covering materials. Many areas in the State of Texas are exposed to severe hail storms causing hundreds of millions of dollars in damages and losses with roof coverings on residential risks sustaining the majority of the damage and loss. The severe hail storms which have occurred in recent years are causing an undesirable effect on the residential property insurance market in Texas. In the areas of Texas where hail damage occurs most frequently, residential property owners are having problems with obtaining residential property insurance from licensed insurers. This lack of availability compels consumers to seek insurance in the surplus lines market at much higher rates or to forego purchasing residential property insurance. Insurers are restricting their writings in the areas where hail occurs most frequently because in the event of a major hail storm their exposure of risk in these areas is too great. Excessive losses due to hail storms have caused increased rates for specific areas of Texas, and any continued pattern of hail storms causing severe damage will continue to produce increased insurance rates.

One solution to the problems created by increasing losses from hail storms is to reduce the losses that are caused by hail storms through the use of roofing materials that are more impact resistant than the roofing materials that are currently being used. The Advisory Committee has focused its review of mitigating losses to residential property in a number of areas, however, the single area that provides the greatest potential for corrective measures to mitigate losses is in the area of damage and loss from windstorms and hail storms. The component of a residential risk with the greatest exposure to hail

damage is the roof covering. The more effective a roof covering product is in preventing a rupture of the roof membrane in a hail storm, the less damage the storm will cause.

There is a need to establish a system for grading the hail resistance of roof covering products, to provide incentives to consumers to purchase the more hail resistant roof covering products, and for manufacturers to produce such products. The first step in this process is the establishment of a grading system to gauge the hail resistance of roof covering products, and this has been accomplished by the development of an impact resistance test by the Underwriters Laboratories known as U.L. Standard 2218. To ensure that manufacturers of roof covering products will manufacture products that meet such a test, it is important to provide consumers with incentives to purchase roof covering products meeting U.L. Standard 2218. The proposed new rules provide the incentives to consumers to purchase roof covering products that meet U.L. Standard 2218 by offering a premium credit on homeowners and dwelling policies that insure risks having a roof covering installed which meets U.L. Standard 2218.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.101, 5.96, and 5.98.

Copies of the full text of the staff petition and the proposed Manual rules and form are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Angie Arizpe at (512) 322-4147, (refer to reference number P-0997-30-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for the Property and Casualty Division, P.O. Box 149104, MC 103-1A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

Issued in Austin, Texas, on October 1, 1997.

TRD-9713022

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: October 1, 1997

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The Commissioner of Insurance will hold a public hearing under Docket Number 2308, on October 28, 1997, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St. Room 100, in Austin, Texas, concerning utilization review agents.

The proposed amendments and the statutory authority for the proposed sections, were published in the September 5, 1997, issue of the Texas Register (22 TexReg 8863).

Issued in Austin, Texas, on September 30, 1997.

TRD-9712981

Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 30, 1997



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Worksite Benefit Plans, Inc., a foreign third party administrator. The home office is Oklahoma City, Oklahoma.

Application for incorporation in Texas of PhyTrac, Inc., a domestic third party administrator. The home office is Houston, Texas.

Application for incorporation in Texas of Keel & Associates, Inc., a domestic third party administrator. The home office is Arlington, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712933
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 29, 1997



Notice of Amendment of a Consulting Services Contract

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of an amendment of a consulting services contract which was awarded for Water Quality Impairment Due to Nonpoint Source Pollution of Colonias-Area Drains in the Upper Rio Grande Basin.

The notice for request for proposals was published in the July 9, 1993, issue of the *Texas Register*.

Description of Services. The contractor will conduct a study of non-point source pollution from Colonias-Area Drains in the Upper Rio Grande Basin.

Effective Date and Value of Contract. This amendment is a no cost contract extension of the contract from the current termination date of August 31, 1997 to a new termination date of August 31, 1998. This amendment will make the contract effective from September 1, 1994, until August 31, 1998. The total cost of the contract is the same original, \$200,000.

Name of the Contractor. The contract has been awarded to ERM-Southwest, Inc., 5959 Gateway West Boulevard, Suite 655, El Paso, Texas 79925.

Persons who have questions concerning this award may contact Charles Dvorsky, Manager (MC150), Data Collection Section, Texas Natural Resource Conservation Commission, Water Quality Division, P.O. Box 13087, Austin, Texas 78711, (512) 239-4411.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712678
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: September 24, 1997



Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 16, 1997, U.S. Online Communications, L.L.C. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60025. Applicant intends to change the legal form of the company from a limited liability company to a corporation.

The Application: Application of U.S. Online Communications, L.L.C. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 18004.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than October 15, 1997. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18004.

Issued in Austin, Texas, on September 30, 1997.

TRD-9712984
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 1997



Notices of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 16, 1997, pursuant to P.U.C. SUBSTANTIVE RULE §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of XIT Rural Telephone Cooperative, Inc. (XIT) for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE §23.103. Project Number 17996.

The Application: XIT's intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before October 20, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 30, 1997.

TRD-9712986

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 30, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 16, 1997, pursuant to P.U.C. SUBSTANTIVE RULE §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of West Texas Rural Telephone Cooperative, Inc. (West Texas) for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE §23.103. Project Number 17997.

The Application: West Texas' intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before October 20, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 30, 1997.

TRD-9712987

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 30, 1997

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Public Notice of Petition for Declaratory Order

Notice is hereby given of a petition for a declaratory order filed by Destec Energy, Inc. (DEI) on August 19, 1997. The Public Utility Commission of Texas (commission) is authorized to issue a declaratory order upon request by a party, pursuant to §§11.003(12), 14.001 and 14.051 of the Public Utility Regulatory Act, 75th Legislature, Regular Session, chapter 166, §1, 1997 Texas Session Law Service 717, 732, 733 (Vernon) (to be codified at Texas Utilities Code Annotated §§11.003, 14.001 and 14.052) (PURA). DEI has requested that the commission interpret PURA §37.001(2) and Substantive Rule §23.31(c)(1)(E) with respect to whether a subsequent sale of steam by the purchaser of the steam and electricity produced by a qualifying cogeneration facility (QF) affects the purchaser's status as the sole purchaser of the thermal output of QF. The petition has been designated Docket Number 17830, Petition of

Destec Energy, Inc. for Declaratory Order, and is available for public inspection at the commission's offices in Austin, Texas.

Persons who wish to intervene and/or comment upon this proceeding shall contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, by October 24, 1997. Persons with questions about the proceeding may contact Eric Dennison, Corporate Counsel, Destec Energy, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002.

Persons with questions about this docket may also contact the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 17830.

Issued in Austin, Texas, on September 30, 1997.

TRD-9712985

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 30, 1997

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Notice of Workshop on the Competitiveness of the Wholesale Power Market

The Public Utility Commission of Texas will conduct a public commission workshop in Project Number 17555, *Investigation into the Competitiveness of the Wholesale Market*, at 10:00 a.m. on Thursday, October 23, 1997. The topics for discussion at the workshop will include the ERCOT Independent System Operator and issues related to the short- and long-term wholesale power markets.

The workshop will be conducted in the commissioner's hearing room located on the seventh floor of the William B. Travis building, at 1701 North Congress Avenue, Austin, Texas, 78701.

Copies of the workshop agenda may be obtained after October 20, 1997 by contacting Sandra Hamlett at (512) 936-7239. For more information, contact Dan Jones at (512) 936-7233 or Danielle Jaussaud at (512) 936-7396.

Issued in Austin, Texas, on September 30, 1997.

TRD-9712988

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 30, 1997

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Request for Comments on Rulemaking on Infrastructure Sharing by Telecommunications Local Exchange Companies

Public Utility Regulatory Act (PURA) §60.163 requires the Public Utility Commission of Texas to prescribe rules that govern sharing of public switched network infrastructure and technology with a requesting local exchange company that is designated as the carrier of last resort. Prior to proposing a rule the commission seeks comments on the following questions. The commission will consider such comments in formulating its proposed rule.

1. Should this rule require both incumbent and competitive local exchange carriers ("LECs") to share network infrastructure and technology?
2. Are both incumbent and competitive LECs eligible to request the sharing of network infrastructure and technology?
3. What is "public switched network infrastructure and technology"?
4. Is any special designation of a "sole carrier of last resort" required? If so, what process should be used in making such a designation?
5. If an incumbent LEC lacks economies of scale or scope to provide advanced public switched network infrastructure-based services in a given exchange, should the company be allowed to share another incumbent or competitive LEC's advanced infrastructure that is deployed in an adjacent exchange? For example, if deployment of an integrated services digital network (ISDN) switch is uneconomical for an incumbent LEC in a given exchange, should it be allowed to offer ISDN service from a remote ISDN switch of another incumbent or competitive LEC?
6. Should the rule allow for cooperative planning of network deployment in order to ensure network reliability? For example, should dissemination of proprietary network facility information be required so that an interconnecting LEC may deploy facilities that are interoperable?
7. Should the rule require LECs to file reports regarding network and technology upgrade plans, so that other LECs may plan their activity in a cooperative manner?
8. If a LEC shares the infrastructure of another LEC, should the rates be based on Total Element Long Run Incremental Cost ("TELRIC") or on 16 TAC §23.91 cost studies?
9. Should the commission require filing of tariffs by incumbent LECs for infrastructure sharing?
10. Should requirements in addition to those established in interconnection agreements be considered for sharing rights-of-way, poles, conduits, and underground ducts? If so, what additional requirements are appropriate?
11. Should the commission establish guidelines for joint ownership and operation of fiber optic and high speed data facilities if such facilities are required to provide services to the public entities defined in PURA §57.021 and §57.042?
12. What conditions should be established by the commission in order to promote cooperation between LECs in sharing infrastructure and technology?
13. How should the requirements of PURA §60.163 be read in conjunction with other requirements in federal and state law requiring resale of unbundled elements to a competitive provider? For example, if these unbundling and resale requirements apply to such infrastructure components as reserved collocation space, pole space, switching facilities, and outside plant facilities such as fiber optics, does the requirement to share infrastructure have any distinct meaning?
14. Do either 47 U.S.C. §259 or the Federal Communications Commission's February 7, 1997 Report and Order in CC Docket Number 96-237, (In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, FCC 97-36) affect the commission's authority under PURA §60.163? If the

commission's authority is not affected by federal law, what weight should the commission give it?

15. What else should the commission consider in formulating its rule proposal?

Comments on the above questions should be filed (18 copies) with the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Ave., P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after the date of this publication. Comments should refer to Project Number 17296.

Issued in Austin, Texas, on October 1, 1997.

TRD-9713014
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 1, 1997



Texas Savings and Loan Department

Notice of Application to Establish Remote Service Unit of a Savings Bank

Notice is hereby given that application has been filed with the Savings and Loan Commissioner of Texas by: South Texas Bank, ssb, Victoria, Texas, for approval to establish and operate a remote service unit at the following location:

Address - Citizens Medical Center, 2701 Hospital Drive;

City - Victoria;

County - Victoria.

The applicant savings bank asserts that: the security of the savings bank's funds and that of its account holders will be maintained and the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the above application must file a written protest with the Commissioner within 10 days following publication. The Commissioner may dispense with a hearing on this application.

This application is filed pursuant to rule 7 TAC §75.37 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

Issued in Austin, Texas, on September 30, 1997.

TRD-9712953
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: September 30, 1997



Texas State Soil and Water Conservation Board

Notice of Intent and Requests for Comments

The Texas State Soil and Water Conservation Board is accepting comments regarding the revision of the State of Texas Agricultural/Silvicultural Nonpoint Source Management Program Plan. The

program plan is for a four-year period beginning with FY 1998 and continuing through FY 2001. This is done in compliance with the Clean Water Act §319(b), as well as State of Texas mandates. The Texas State Soil and Water Conservation Board, in accordance with responsibilities given the agency under §201.026 of the Agricultural Code of Texas, is responsible for planning, implementing and managing programs and practices for abating agricultural and silvicultural nonpoint source pollution within the state of Texas. Implementation of agricultural/silvicultural nonpoint source management programs is heavily dependent on utilization of existing programs. Entities involved with implementation of nonpoint source management programs are therefore solicited for comments. The Texas State Soil and Water Conservation Board requests submittal of comments relative to milestones and agency/organization mission statements relating to agricultural/silvicultural nonpoint source pollution abatement.

A draft of the milestone format and mission statement and any additional information may be obtained by contacting Byron "Bo" Spoons, Jr., Director of Programs, at (254) 773-2250. All comments should be submitted no later than 5:00 p.m., October 31, 1997, to Bo Spoons, Jr., Director of Programs, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503.

Issued in Austin, Texas, on October 1, 1997.

TRD-9713016

William C. Neiser

Assistant Executive Director of Administration

Texas State Soil and Water Conservation Board

Filed: October 1, 1997



Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

East Cedar Creek Fresh Water Supply District, P.O. Box 309, Mabank, Texas, 75147, received September 4, 1997, application for financial assistance in the total amount of \$4,195,000 from the State Water Pollution Control Revolving Fund and the Water Supply Account of the Texas Water Development Fund.

City of Reno, 165 Bybee Street, Paris, Texas, 75462, received August 20, 1997, application for financial assistance in the amount of \$1,950,000 from the State Water Pollution Control Revolving Fund.

Polk County Fresh Water Supply District No. 2, P.O. Box 333, Onalaska, Texas, 77360-0333, received September 3, 1997, application for financial assistance in the total amount of \$5,210,000 from the State Water Pollution Control Revolving Fund and the Water Quality Enhancement Account of the Texas Water Development Fund.

City of Pharr, P.O. Drawer B, Pharr, Texas, 78577-1202, received September 2, 1997, application for additional grant/loan assistance in the amount of \$8,532,000 from the Economically Distressed Areas Program and the Water Supply Account of the Texas Water Development Fund.

Military Highway Water Supply Corporation, P.O. Box 250, Progreso, Texas, 78579-0250, received December 27, 1995, application for financial assistance in an amount not to exceed \$15,000 from the Research and Planning Fund.

Porter Municipal Utility District, P.O. Box 25, Porter, Texas 77365, received September 2, 1997, application for financial assistance in the amount of \$2,145,000 from the State Water Pollution Control Revolving Fund.

City of Lorena, 114 East Center Street, Lorena, Texas, 76655-9651 received September 2, 1997, application for financial assistance in the amount of \$3,335,000 from the Water Supply Account of the Texas Water Development Fund.

McCoy Water Supply Corporation, Route 1, Box 8A, McCoy, Texas, 78053, received September 2, 1997, application for financial assistance in the amount of \$950,000 from the Water Supply Account of the Texas Water Development Fund.

Hidalgo County Drainage District No. 1, 100 E. Cano, 2nd Floor, Edinburg, Texas, 78539, received August 1, 1997, application for grant assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

City of Denton, 221 North Elm Street, City Hall West, Denton, Texas, 76201, received August 18, 1997, application for grant assistance in an amount not to exceed \$37,599.50 from the Research and Planning Fund.

Rio Grande Council of Governments, 1100 North Stanton Street, Suite 610, El Paso, Texas, 79902, received August 18, 1997, application for grant assistance in an amount not to exceed \$16,875 from the Research and Planning Fund.

Trinity Bay Conservation District, P. O. Box 580, Anahuac, Texas, 77514, received August 18, 1997, application for grant assistance in an amount not to exceed \$71,980 from the Research and Planning Fund.

South Texas Development Council, P. O. Box 2187, Laredo, Texas, 78044-2187, received August 19, 1997, application for grant assistance in an amount not to exceed \$170,036 from the Research and Planning Fund.

City of Georgetown, P.O. Box 409, Georgetown, Texas, 78627-0409, received August 19, 1997, application for grant assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

City of Alice, P.O. Box 3229, Alice, Texas, 78333, received August 19, 1997, application for grant assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

City of Gainesville, 200 South Rusk Street, Gainesville, Texas, 76240, received August 19, 1997, application for grant assistance in an amount not to exceed \$125,000 from the Research and Planning Fund.

Willacy County, 546 West Hidalgo Street, Raymondville, Texas, 78580, received August 19, 1997, application for grant assistance in an amount not to exceed \$105,468.75 from the Research and Planning Fund.

Orange County Drainage District, Route 9, Box 1190, Orange, Texas, 77630, received August 19, 1997, application for grant assistance in an amount not to exceed \$191,775 from the Research and Planning Fund.

City of Lufkin, P.O. Drawer 190, Lufkin, Texas, 75902, received August 19, 1997, application for grant assistance in an amount not to exceed \$72,945 from the Research and Planning Fund.

City of Celina, P.O. Drawer D, Celina, Texas, 75009, received August 19, 1997, application for grant assistance in an amount not to exceed \$24,000 from the Research and Planning Fund.

City of Eagle Pass, P. O. Box 4019, Eagle Pass, Texas, 78853, received August 19, 1997, application for grant assistance in an amount not to exceed \$63,750 from the Research and Planning Fund.

Frio County, 500 East San Antonio, Pearsall, Texas, 78061, received August 19, 1997, application for grant assistance in an amount not to exceed \$37,500 from the Research and Planning Fund.

Lower Colorado River Authority, P.O. Box 220, Austin, Texas, 78767, received August 19, 1997, application for grant assistance in an amount not to exceed \$250,000 from the Research and Planning Fund.

Texas Alliance of Groundwater Districts, P.O. Box 637, White Deer, Texas, 79097, received September 18, 1997, application for financial assistance in an amount not to exceed \$20,255 from the Research and Planning Fund.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

Issued in Austin, Texas, on October 1, 1997.

TRD-9713024

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Filed: October 1, 1997

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